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GENETIC MEDICINE IN THE HALAKHAH

Ronald M. Green

THE HOUSE OF ISRAEL SEEN FROM AFAR

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THE HAND OF GOD LEAVES NO FINGERPRINTS

Robert J. Milch

RABBIS AND RABBIS

Roland B. Gittelsohn

LIES, WIVES AND SISTERS

Daniel H. Gordis

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STATEMENT OF PURPOSE

In increasing measure, modern men are turning again to the quest for a worldview on the issues that are timeless—the meaning of life, the challenge of death, the purpose of suffering, the significance of the individual, his relation to society, and the goal of history. In order to advance this enterprise of spiritual discovery of our time this Journal has been projected. It will be primarily concerned with the philosophy, ethics, and religion of Judaism as a factor in the contemporary world . . .

We are committed to the proposition that Judaism has positive value today for Jews and for the world . . . At the same time, we disassociate ourselves from the dangerous tendency toward the hardening of party lines on the contemporary Jewish scene . . . The members of the Board of Editors belong to every school of Jewish life or to none. The trends popularly referred to as Orthodox, Conservatism, Reform, Reconstructionism, as well as others that as yet have no specific names, have their advocates among us, though no institution or movement is officially represented . . . Undoubtedly, our differences will find expression in these pages, but we shall be at one in opposing the dogmatism which takes for granted that one's own particular standpoint has a monopoly on truth and the authoritarianism which would suppress any contrary point of view.

Judaism will be dedicated to the quest for truth in the spirit of freedom. Our columns will be open to anyone who has something significant to say and the ability to say it well. New and unconventional interpretations, whatever their standpoint, will be welcomed from every source, for we share the conviction of the Talmud that "Both these and the others are the words of the living God." *From the introductory article by Robert Gordis, "Toward a Renaissance of Judaism" in Vol. I, No. 1.*

The First Reader

Medicine and Halakhah

Recent developments in the field of genetic medicine have been mind-boggling. Aside from their intrinsic importance, they have also raised religious and ethical issues for theologians and moral philosophers. In his paper, "Genetic Medicine in the Perspective of Orthodox Halakhah," *Ronald M. Green* analyses discussions on the subject by Orthodox spokesmen and suggests that a more flexible approach to these new areas of research and practice is called for.

Judaism by Choice

Among the phenomena discussed by the famous American philosopher and psychologist, William James, in his brilliant book, "The Varieties of Religious Experience," is conversion, when a person adopts a new religion in place of the one in which he had been reared.

There are countless motivations, both conscious and unconscious, entering into a conversion. One of the most remarkable instances is described by James P. Farnham in his paper, "The House of Israel Seen From Afar." It is a moving testament of faith and a warm-hearted tribute to the intellectual and ethical qualities of Judaism, of which many Jews are all too often unaware.

We Are a Covenanted People

One of the most remarkable features of the Jewish tradition is its capacity for holding fast both to universalism, a concern for the family of mankind as a whole, and particularism, a loyalty to the specific needs and interests of the Jewish people. Because these two poles appear to be contradictory, many Jews, as well as Christians, learned as well as untutored, have failed to recognize the life-giving qualities of this tension between these two principles.

David Polish, in his paper, "Covenant — Jewish Universalism and Particularism," traces the history of the *brit* or Covenant from Adam to the establishment of the State of Israel. He stresses the fact that failure to

maintain both elements is disastrous. In this case, half a loaf may be worse than none.

Man Must Protect the World

The rapidly mounting problems with regard to the poisoning of soil, water and air in our time are obviously among the less attractive features of our technological progress. As society struggles for solutions, with economic interests poised against broadly human concerns, there is a revived interest in the teachings of religion on the subject.

In their paper, "Judaism and the Practice of Stewardship" *David Ehrenfeld*, a biologist, and *Philip J. Bentley*, a rabbi, present some of the fundamental insights of the Jewish tradition on ecology.

How The Prayerbook Grew

There has been considerable controversy in contemporary Judaism concerning the differences in the text of the prayerbook used among the various groups. This is entirely understandable since the Siddur and the Mahzor constitute the classic expression of Jewish belief and aspirations.

Underlying all the differences that have developed during the twenty centuries of Jewish prayer are certain fundamental principles which serve both to increase understanding and diffuse controversy on the Jewish liturgy. These "laws" of the liturgy are presented by *Jakob J. Petuchowski* in his paper, "Some Laws of Jewish Liturgical Development."

Rabbis: Priests and Prophets

One of the most revealing traits of our times is the virtual disappearance of the term "justice." What is even more disturbing is that its absence is equally obvious in religious circles. Political scientists and sociologists would explain the phenomenon as part of the rightward movement of society, its new-found "neo-conservative" trend. Less sophisticated observers would explain it as manifestations of the unabashed self-seeking and greed in which the "Me Generation" takes pride.

In his paper, "Rabbis and Rabbis," *Roland B. Gittelsohn* recalls an earlier generation for whom justice was a live concern and draws some unflattering contrasts between rabbinical leaders of the past and their present successors. He is, in effect, calling for a renewal of social concern among Jewish leaders and laity.

But Is It Kosher?

The centuries-old struggle between Church and State, which has marred the history of Europe, was mercifully avoided in this country because of the wisdom of the Founding Fathers who, in the First Amend-

ment established the principle of the separation of Church and State. Its implications have been buttressed through the years by many important decisions of the Supreme Court. There were always gray areas which lent themselves to varying interpretations, but, on the whole, the boundaries of these two domains were clear.

The turn to the right, embodied in the Reagan Administration, has been obvious in some of the recent Supreme Court decisions which have "supported" the cause of religion in general; others seem to reveal a pro-denominational bias which gives cause for concern.

One area in which American courts have had occasion to deal with Jewish religious interests is that of kashrut. *Mark F. Lewis* examines this corpus of decisions in "Kashrut and Controversy." Over and beyond the intrinsic interest of the cases themselves, his paper may lead to reflections on the relationship of ethics and ritual in contemporary Judaism, reflections that may not be altogether happy.

The Patriarchs and Their Sister-Wives

One of the most striking incidents in the book of Genesis occurs three times, twice in connection with Abraham and once with Isaac. In each instance, the Patriarch, coming into contact with a foreign king, is led by fear to lie about his beautiful wife and to declare her to be his sister. The repetition of the motif has led critical scholars to postulate different sources for each narrative. The critical question aside, however, the presence of the three incidents in the text of Genesis requires explanation.

Daniel H. Gordis offers a close reading of the three biblical passages. In "Lies, Wives and Sisters: The Wife-Sister Motif Revisited," he calls attention to variations in content and emphasis in the three accounts and reveals implications that are both interesting and significant.

Law is Basic

The centrality of the law has always been recognized in Judaism both by its advocates and its antagonists. In his paper, "The Perception of Law in Judaism," *Mordecai Roshwald* presents the salient elements in the Jewish conception of ethical and ritual law, as well as the nature of the obligation which the covenant imposes upon the Jew.

God Is Always Involved

Religion has always tended to recognize the hand of God in the events of the distant past, be it the Exodus from Egypt or the crossing of the Red Sea or similar ancient and miraculous manifestations of the Divine in history. On the other hand, the events of one's own day are rarely interpreted as being governed by God.

In his paper, "The Hand Of God Leaves No Fingerprints," *Robert J. Milch* discusses this trait of religious believers and suggests that the workings of God in history should be recognized in the major events of our own day, no less than in the past.

Religious Dialogue in the Middle Ages

In the long history of Jewish-Christian relationships, now nineteen hundred years old, a fundamental change has taken place in our day. Whereas "discussions" between spokesmen for Judaism and Christianity in the past took the form of disputation and even more violent kinds of confrontation, such as massacres and expulsions, the dialogue between spokesmen of the two faiths in our time is generally marked by mutual respect and a genuine desire to understand each other.

Nonetheless, history must not be blotted out, if only because, as George Santayana reminded us in his well known epigram, those who forget the past are doomed to repeat it.

In his review-essay, "Medieval Christianity Confronts Talmudic Judaism" *Joel E. Rembaum* discusses two significant works dealing with Jewish-Christian relations in the Middle Ages.

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Our readers will probably not be astonished to learn that articles from our pages are frequently reprinted, in the original or in translation, in other periodicals, both here and abroad. A good case in point is afforded by the Spanish language journal, *Maj'shabot*, published in Argentina. Its latest issue contains twenty articles, eighteen of which are translated from JUDAISM.

R.G.

Genetic Medicine in the Perspective of Orthodox Halakhah

RONALD M. GREEN

SOME OF THE MOST DRAMATIC PROGRESS in medical care within the past two decades has been made in the areas of genetic and neonatal medicine. Not only have techniques been developed to identify and screen carriers of genetic disease or to diagnose genetic disorders *in utero*, but medical technologies are rapidly being developed which hold out the promise of remedying or curing genetic maladies at the earliest stages of life. At the same time as these advances are being made, the new technologies have created novel and perplexing moral questions for individuals and families. Genetic screening, techniques of fetal diagnosis and life-extending neonatal technologies have presented parents or prospective parents with painful new choices throughout the whole course of the reproductive process.

In what follows, I propose to explore the implications of traditional Jewish law for some of the new choices made possible by genetic and neonatal medicine. The bearing of the halakhic tradition on this area has importance for several different reasons. First, because many Jews, whether they are Orthodox or not, find themselves instructed and informed by the values embodied in this tradition. Second, because of Jews' social history, their emphasis on marriage within the Jewish community and their frequent isolation in small, separated communities, there are a number of genetic diseases which disproportionately afflict persons of Jewish background. One example is the carrier state for Tay-Sachs disease whose incidence is ten times higher among Jews of Ashkenazic or East-European background than among other major European or Mediterranean populations.¹ Anyone likely to screen or counsel Jewish patients, therefore, should be aware of traditional religious sensitivities in this area. Finally, Jewish interest in matters of genetic medicine and genetic screening is greatly magnified by the fact that the Jewish community in our time has been almost uniquely victimized by perverted efforts at genetic control. I refer to the Nazi program of genocide, which was partly grounded in a racist pseudo-genetics and included not only mass-

1. Richard M. Goodman, *Genetic Disorders among the Jewish People* (Baltimore: Johns Hopkins University Press, 1979).

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killings but efforts at compulsory abortion and forced sterilization. Any individual or organization mounting a program of genetic screening, therefore, must be alert to Jewish sensitivities as these have been shaped both by recent experience and by centuries of religious thought.

As we turn to Jewish thinking in this area it is misleading to suggest that there is a single, authoritative body of teaching about reproductive responsibility. Orthodox, Conservative, Reform and Reconstructionist spokesmen have made pronouncements on issues related to genetic medicine, like abortion, and these pronouncements have differed widely. Nor is the problem of diversity solved if we focus, as I intend to do, on the halakhic tradition. It is true that this tradition does inform every self-confessedly "Jewish" point of view. Even Conservative and Reform thinkers, who do not feel bound by every commandment of Jewish Law, look to this Orthodox halakhic tradition for moral guidance and inspiration. Nevertheless, the halakhic tradition is, itself, divided in its teaching or implications for these crucial questions. On the one hand, there exists a substantial body of opinion, much of it recently expressed, that takes a very stringent position on some of the moral questions related to genetic and neonatal medicine. On the other hand, there is also a "lenient" or "liberal" line of thought with dramatically different implications for some of the choices facing couples or society in this area.

In these pages I shall focus on halakhic or Orthodox legal teaching itself and on these two contesting interpretations of Jewish law. On each point, I shall begin with the more stringent position, which has become very influential in the lives of many Torah-abiding Jews and is the position that one is most likely to encounter in contemporary texts or articles dealing with questions in Jewish bioethics. In fact, this stringent position has been forcefully articulated by some of the leading English language writers and commentators in Jewish biomedical ethics today, including Rabbi Immanuel Jakobovits, Chief Rabbi of Great Britain, Rabbi J. David Bleich and the physician, legal-scholar Fred Rosner.² But a warning is in order here. Though I will give perhaps the bulk of my attention to this stringent Orthodox view, I do not myself agree with it. Nor is this disagreement merely personal. There is good reason to believe that this stringent view, although perhaps to the fore in Orthodox scholarship today, is not, in fact, representative of the deepest insights of the Biblical or Talmudic traditions. What I shall try to do is present this predominant stringent position as fully and as fairly as I can. Only after doing so will I contrast it with the more lenient Orthodox view with which I am personally more sympathetic.

2. J. David Bleich, *Contemporary Halakhic Problems* (New York: Ktav Publishing House, 1977) and *Judaism and Healing* (New York: Ktav Publishing House, 1981); Immanuel Jakobovits, *Jewish Medical Ethics*, revised edition (New York: Bloch Publishing Company, 1975); Fred Rosner, *Modern Medicine and Jewish Law* (New York: Yeshiva University Press, 1972); Fred Rosner and J. David Bleich, eds., *Jewish Bioethics* (New York: Sanhedrin Press, 1979).

The stringent Orthodox view rests on four major bases developed out of the Talmud, the authoritative codes of Jewish law and the specific responsa literature that these have engendered. A first major basis is an insistence on the obligation to procreate. The various injunctions found in Genesis were elaborated by the Talmud into the specific *mizvah* or commandment of *p'ru ur'vu*, "be fruitful and fill the world." This was understood specifically as the obligation incumbent on every Jewish male to beget offspring. As such, the commandment was qualified in several ways. In the earliest sources, for example, various minimum levels of fulfillment were stipulated (alternately one boy and one girl or two boys), but later commentators tended to insist on the male's ongoing and life-long responsibility to procreate.³ Any form of male contraception involving destruction of semen was explicitly prohibited. Female contraception was permitted when a pregnancy would seriously compromise the life or health of the mother,⁴ but deliberately sterile marriages were prohibited and, once a male had married, the Orthodox view is that, with the full cooperation of his wife, he must continue to try to have children. No considerations of fiscal advantage, emotional or genetic well-being are allowed to interrupt his fulfillment of this responsibility.⁵

A second major basis of the Orthodox view is a qualified, indeed very limited, permission for abortion. It is not derived from any consistent body of Talmudic or rabbinic teaching regarding the "nature" of the embryo or prenatal life. In fact, rabbinic views on this matter differ widely. They range from the position that the very early embryo is nothing more than "water" or fluid, to the view that from conception onward it is a conscious entity capable of being instructed in Torah by God while still in the womb.⁶ These speculations, however, play little or no role in the legal evaluation of fetal life which is, rather, established by an explicit ruling in the Talmud, in the Mishnah of Tractate *Oholoth* (7:6):

If a woman is in hard travail, we cut up the child in her womb and bring it forth member by member, because her life comes before that of the child. But if the greater part had proceeded forth, one may not touch it, for one may not set aside one person's life for that of another.⁷

This text obviously permits killing the fetus when the mother's life is in danger. Indeed, it mandates feticide in such life-for-life cases, and it permits such killing right up until the moment of birth. But is abortion permitted for lesser reasons? We shall soon see that the answer to this

3. Bleich, "Sexuality and Procreation," in Isaac Frank, ed., *Biomedical Ethics in the Perspective of Jewish Teaching* (Washington, D.C.: College of Jewish Studies, 1980), pp. 1-11.

4. The most authoritative contemporary discussion of Jewish teaching on sexuality and birth control is David Feldman's *Marital Relations, Birth Control and Abortion in Jewish Law* (New York: Schocken Books, 1974).

5. Rosner and Bleich, eds., *Jewish Bioethics*, Chs. 5 and 6.

6. Feldman, pp. 271-275.

7. All quotations are from the Soncino edition, I. Epstein, ed., 35 vols. (London: Soncino Press, 1935-1961).

question is not as clear as many contemporary Orthodox scholars appear to believe. Nevertheless, the stringent position I am here developing takes the text's silence on this matter as evidence that abortion is not allowed for lesser reasons, and buttresses this view with reference to an important gloss on this passage by Maimonides.⁸ In explaining this teaching in *Oholoth*, Maimonides likens the fetus to a pursuer (*rodef*) who has placed the mother's life in jeopardy. Maimonides' meaning, these Orthodox scholars conclude, is that the fetus has the same status as an adult "pursuer" whose life may be taken because it threatens one's own. The implication is that the fetus, like the adult "pursuer," may not be killed for lesser reason. This reading of Maimonides — and we shall shortly see that it is not the only way that he can be understood — strengthens the claim that abortion is permitted only when the mother's life is in peril.

A third major basis of this stringent contemporary view is found in the Talmud's position on treatment of the ill or dying. Here, the classical Jewish sources are exceptionally rigorous. Because of the insistence on the sanctity of human life, the Talmud proscribes suicide or exposure of the self to mortal risk. It enjoins strenuous efforts to save the life of an infirm person and it prohibits efforts to hasten the death of a terminally ill one. In the Talmudic view, a dying patient merits all the protection due to any other individual. Even the removal of a pillow from beneath the head of a dying person is prohibited since this might have the effect of precipitating his death.⁹ There are, however, some interesting Talmudic qualifications of this view. Where the individual involved is a *goses*, one who has already entered the dying process (according to some accounts, a *goses* is one whose death is no more than three days away¹⁰), it is permissible to remove extraneous factors which might be impediments to dying. For example, one may bring a halt to the loud noise of someone chopping wood in the vicinity if this rivets the patient's attention and prevents him from passing away. Some very contemporary commentators have developed this position into a permission for ceasing aggressive medical care for the dying, although other commentators hesitate to accept this conclusion.¹¹ In general, I think it fair to say that the halakhic position is stricter than corresponding teaching in the Catholic tradition, where, as I understand it, a good deal of discretion exists on the part of the patient and family concerning which treatments are extraordinary and, hence, not morally required.¹² In classical Jewish teaching, in general, it seems that unstinting efforts must be made to sustain or heal a seriously ill indi-

8. Moses Maimonides, *The Code of Maimonides (Mishneh Torah)*, 19 vols. (New Haven: Yale University Press, 1949), vol. 11, p. 196.

9. *Ibid.*, vol. 14, p. 174.

10. Jakobovits, p. 121; Bleich, *Judaism and Healing*, p. 141.

11. Jakobovits, p. 123.

12. Gerald Kelly, *Medico-Moral Problems* (St. Louis: Catholic Hospital Association, 1958), pp. 129ff.

vidual. In any case, no remotely active efforts at hastening death are allowed.

A fourth and final basis of the stringent Orthodox view is related to this emphasis on the sanctity of human life. It is the permission for medical interventions that are therapeutic in nature. Despite its uncompromising monotheism and trust in divine providence, Judaism is not a tradition that has condemned the use of medical intervention to halt disease or to restore health. Because of the stress on the sanctity of human life, even risky experimental procedures are permitted if they hold out the promise of a cure. This teaching and the reliance on God's providence were brought together from a very early date by the understanding that, while the physician is the proximate cause of healing, God is its ultimate source.¹³ Hence, the doctor and the medical care system as a whole are instrumentalities of the divine will.

In contemporary Jewish literature on bioethics, these four bases for a stringent position have been directly related to the matter of genetic and neonatal medicine. The last of these four bases, for example, has been viewed as legitimating specific therapeutic efforts to prevent or cure genetic disease, whether these efforts are undertaken prior to conception, during uterine development or following birth. Efforts to use chemical or biological agents to alter genetic material in the germinal cells or embryo, efforts to provide replacement therapy in utero or beyond, and surgical correction of congenital anomalies are all permitted as being in conformity with the general Talmudic encouragement to medical healing. In this respect, even the most conservative Orthodox thinking provides no support for the view that such genetic manipulation would be an unallowable "tampering" with nature.¹⁴

As we go beyond clearly therapeutic efforts of this sort, however, Orthodox teaching, as interpreted through the lens of this stringent tradition, begins to have difficulty with aspects of modern genetic medicine. Screening programs for genetic disease, for example, are placed under severe constraint. They are permitted when entirely voluntary, when conducted outside the semi-coercive context of public institutions like schools, and when the information that is developed is treated as a confidential matter between the genetic carrier and the physician. This reflects a concern, sharpened by recent Jewish experience, that those identified as carriers of a genetic disease might be stigmatized if their condition were made public.¹⁵ These programs are also permitted when

13. Babylonian Talmud, Tractate *Berakot* 6a; Jakobovits, Ch. 1.

14. Azriel Rosenfeld, "Judaism and Gene Design," in Rosner and Bleich, eds., *Jewish Bioethics*, 401-408. Rosenfeld also bases this view on the talmudic teaching that the prohibitions of Jewish law do not extend to the microscopic level.

15. Jakobovits, "Tay-Sachs Disease and the Jewish Community," *Proceedings of the Association of Orthodox Jewish Scientists* 5 (1979), pp. 11-17; Rosner, "Tay-Sachs Disease: To Screen or Not to Screen," in Rosner and Bleich, eds., *Jewish Bioethics*, pp. 178-190.

those screened are not yet married and when the information is used to determine the choice of a spouse. It is acknowledged that the Talmud explicitly recognizes health factors in the choice of a mate when it counsels against one's marrying into a family of epileptics or lepers.¹⁶

While Orthodox commentators disagree on whether pre-marital screening should be applied to younger children or only to individuals of marriageable age, there is substantial agreement among strict commentators that screening efforts should *not* extend to married couples or to couples definitely planning marriage. Several of the halakhic bases I have referred to underlie this prohibition. First, there is the commandment to procreate. Since one use to which screening information might be put by married couples is in a decision to have no more children, and since this stringent commentary tradition does not view genetic factors as a grounds for failing to fulfill the obligation to procreate, screening programs among married or engaged couples are regarded as objectionable.¹⁷ It should be noted, however, that since even the strictest commentators permit female contraception when the mother's life or health are in jeopardy, there is no objection to the individual quest for genetic information with the intent of contraception or sterilization where the mother is emotionally unstable and where her health or life would be threatened by giving birth to a genetically diseased child. But this permission, obviously, has no bearing on the justification of mass screening programs.

These programs also come under criticism because of the possibility that they might encourage the selective abortion of genetically diseased fetuses.¹⁸ We have seen that according to this strict commentary tradition, abortion is permitted only when needed to save the life of the mother. Once again, this means that if the birth of a genetically deformed child might imperil the mother's life, as when she might commit suicide as a result, abortion would be permitted. But these commentators generally maintain that abortion is not permitted for genetic reasons alone. This is the view, for example, of Rabbi Immanuel Jakobovits, who bases it partly upon what he regards as the uncertainty of any genetic diagnosis in utero and the fact that the aborted fetus might not be seriously diseased.¹⁹ It is also the view of Rabbi I.J. Unterman, former Chief Rabbi of Israel, who,

16. Jakobovits, *Jewish Medical Ethics*, pp. 155f.

17. Bleich, *Judaism and Healing*, Ch. 18; Rosner and Bleich, *Jewish Bioethics*, Ch. 10; Jakobovits, *Jewish Medical Ethics*, p. 263.

18. Jakobovits, *Jewish Medical Ethics*, p. 263; Rosner and Bleich, eds., *Jewish Bioethics*, pp. 184-186.

19. I. Jakobovits, "Review of Recent Halakhic Periodical Literature: Deformed Babies," *Tradition* 5:2 (1963): 269. It is to be noted that, despite his affirmation that the only legitimate indication for an abortion is a threat to the mother, Rabbi Jakobovits has repeatedly affirmed that every individual case of possible genetic deformity must be judged by competent rabbinical experts. See also his *Jewish Medical Ethics*, p. 263.

in explaining his position, places even greater stress on the sanctity of prenatal life. In a discussion of fetuses possibly damaged by exposure to rubella or thalidomide, Unterman states that “this prohibition would stand even if it were certain . . . that the child would be born deformed, just as it is forbidden to kill a crippled person.”²⁰

It is worth adding here that there exists a disputed sub-tradition of halakhic reasoning which, on the basis of a pleonasm in the text of Genesis 9:6, holds that abortion and feticide are prohibited not only to Jews but to all the Sons of Noah — that is, to the entire human family. Furthermore, those who read the texts this way stress that, in some ways, the prohibition for non-Jews is stricter than for Jews since the Noahide Law views feticide as a capital offense whereas Jewish law does not.²¹ The implication is that these stringent commentators would find reason to oppose *any* broad-based genetic screening program connected with the possibility of genetic abortion. In this country, of course, Jews have not been as militant as some other religious groups in trying to have their religious-moral views expressed through public law. This specific opposition to genetic abortion and related screening programs is also held, at best, by only the more conservative members of the Orthodox community. I mention this viewpoint, however, to indicate an unexpected but possible source of religious opposition to some publicly funded mass screening programs.

It is obvious that if these stringent commentators oppose screening programs that have genetic abortion in prospect, they also oppose purely individual resort to amniocentesis and genetic abortion. Except where the mother's life is somehow clearly imperiled, this is not regarded by these commentators as an option for Jewish parents.

Finally, this commentary tradition has specific implications as well for the treatment of congenitally deformed newborns — whether born prematurely or at full term. Such infants are regarded by this tradition as fully persons. Since the death of an adult may not actively be hastened, these commentators conclude that infants suffering even severe deformity must be nourished and must be given available medical care. In this connection, some commentators make reference to the twelfth century moral and legal treatise, *The Book of the Pious*, which deals explicitly with the case of a “monster” child born with the teeth and tail of an animal. In response to the question of whether this infant might be killed, the Book replies “no” and counsels, instead, surgical removal of the offensive appendages.²² It may be objected, of course, that compared with some genetic diseases like Tay-Sachs, this “monster” suffers from a relatively mild condition. Nevertheless, many of the Orthodox commentators to

20. Quoted in Jakobovits, “Review of Recent Halakhic Periodical Literature,” p. 268.

21. Bleich in Rosner and Bleich, *Jewish Bioethics*, pp. 161-163.

22. *Ibid.*, pp. 160f.; Jakobovits, “Review of Recent Halakhic Literature,” p. 269.

whom I have been referring do not allow qualitative distinctions of this sort. Rabbi Unterman, remarking on proposals for neonatal infanticide, states that there can be no justification for killing a deformed newborn even by indirect means (such as starving it to death). He says:

[T]his very thought appears to me as opposing the outlook of the Torah on human life, whereby even in the hardest moments it is forbidden to sacrifice life for any reason whatever other than the sanctification of the Divine Name (martyrdom) or the saving of the mother's life.²³

This strict prohibition on any form of neonatal infanticide leaves undiscussed whether various forms of cessation of active medical effort may be tolerated in order to allow a severely deformed newborn to die. The fact that the newborn is here likened to any other human life, however, suggests that a cessation of care would be halakhically permitted only if the infant were judged to be a *goses*, one who had already entered the dying process. Even then, the use of any remotely active means to hasten death might be prohibited.

On this point we round out what I have called the stringent view of halakhic Jewish legal scholarship on matters of genetic medicine. In its entirety, this is a rigoristic position which emphasizes a commitment to procreation and the sanctity of human life from conception onward. It is relatively unmoved by the severity of genetic diseases. Whatever exceptions are made to its stricter prohibitions are made with Talmudically enjoined concern for the mother's survival in mind, not on the basis of quality-of-life or health considerations for the victims of genetic disease or for their families. With the exception of the permission for contraception and abortion where a mother's life is in peril, this is a position remarkably similar to Catholic teaching on these matters.

I want to reiterate that what I have been presenting is only one view among Orthodox commentators. A second, and contrasting, position taps a well of more lenient biblical and Talmudic teaching about reproduction and prenatal life. Although this tradition was the predominant one in the earliest sources, it has been eclipsed by the more stringent position in the modern period. This more lenient view has several features which I might summarize at the outset. First, it qualifies and is willing to relax the insistence on the obligation to procreate. Second, it involves a significantly reduced legal valuation of prenatal life and a greater permission for abortion. Finally, it continues this relative devaluation on prenatal life into the period following birth if there are doubts about the infant's viability.

We have already noted the efforts made by the earliest decisors to qualify and limit the commandment to procreate. The schools of Hillel and Shammai, even as they differ over the precise number of male offspring one must have to fulfill this commandment, impose requirements

23. Quoted in Jakobovits, "Review of Recent Halakhic Periodical Literature," p. 268.

that are relatively light (one boy and one girl in the case of Hillel, two boys in the case of Shammai). As Robert Gordis has noted, it is only later in Jewish history, when the pressures of demographic extinction become more severe, that this teaching is altered by appeal to ordinarily less authoritative non-Torahitic sources in order to impose a life-long obligation to procreate.²⁴ Furthermore, throughout the history of halakhic discussion of this commandment, it is almost always presupposed that a woman may forebear entirely from procreation under exceptional circumstances. This teaching is explicitly advanced in connection with Talmudic discussion of the use of a sterilizing potion or "cup of roots" (*kos shel ikkarin*). The primary reference to this issue in the Talmud occurs in the case of the wife of R. Hiyya who, we are told, had previously experienced great pain and difficulty in childbirth. Disguising herself, she sought her husband's ruling on whether the biblical commandment of *p'ru ur'vu* is incumbent upon the female in such circumstances. R. Hiyya told her that *it was not, and she went and took a sterilizing potion*.²⁵ Both this discussion and later commentary suggest that, in a legal sense, there was nothing wrong with her conduct. Not only mortal risk, but also great pain in childbirth justify this recourse. Surely, however, if this is the case, the enormous psychic pain accompanying the birth of a congenitally deformed child must count as a reason for abstention from procreation. Contemporary decisors who rule out genetic considerations as reasons for abstaining from childbearing or who would prohibit married couples from participation in screening programs seem out of step with a major, lenient motif within the halakhic tradition.

A significantly more lenient tradition also exists on the matter of abortion. This position has foundation in Biblical and Talmudic teaching. One very important text is Exodus 21:22-25, the only explicit Biblical statement dealing with the normative issues raised by the taking of prenatal life. It is sometimes maintained that the Bible has a position on the abortion question, but apart from a number of poetic or homiletical statements about the embryo, Exodus 21:22 is the only explicit normative injunction dealing with uterine life.²⁶ It states:

When men strive together and hurt a woman with child so that there is a miscarriage, and yet no harm (*'ason*) follows, the one who hurt her shall be fined, according as the woman's husband shall lay upon him; and he shall pay as the judges determine. If any harm follows, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe.

24. See his article, "Be Fruitful and Multiply" — Biography of a Mitzvah," *Midstream*, 28 (August-September 1982): 21-29 and the exchange between Gordis and Immanuel Jakobovits, "Large Jewish Families," *Midstream*, 29 (October, 1983): 39-43. Also, Gordis, *Love and Sex: A Modern Jewish Perspective* (New York: Farrar Straus Giroux, 1978). Ch. 8.

25. Babylonian Talmud, Tractate *Yebamot* 65b; Feldman, pp. 235-244.

26. A similar absence of prescriptive teaching with respect to abortion also characterizes the New Testament.

Very clearly, this text does not regard the fetus as a “life” in the fullest sense nor does it regard killing it as homicide. If the mother suffers harm, then the full penalty is exacted, but if only the fetus is destroyed, no “harm” is held to follow and only a money payment is required. Rather than a criminal offense, what is involved is more properly a tort against the father who has property rights in this developing entity.

This same devaluation of the fetus is picked up and sustained in the Talmudic sources that form the basis for this more lenient view. Two texts are particularly important in this regard. We have already looked at one: the discussion in *Oholoth* which permits abortion of the full term fetus when the mother’s life is in peril. I have already indicated that this text is silent on the permissibility of abortion for lesser reasons or earlier in a pregnancy. We have seen that the more restrictive tradition interprets this silence as a prohibition on abortion for lesser reasons, and it points to Maimonides’ pursuer analogy to justify its reading of the text. More lenient commentators, however, tend to point out that Maimonides’ text may be more complex than it appears. This is suggested by the fact that, on the conservative reading, it appears to involve a slight contradiction, for if the fetus may be killed as a pursuer before the birth process is well-advanced, why may it not be killed, like any “pursuer,” if it threatens her life at the end of the birth process?²⁷ Why this careful drawing of lines with respect to its “pursuer” status? This, and the observation that Maimonides seems to contradict the Talmudic position that the fetus is not yet a life, have led a host of commentators to speculate on his precise meaning in this discussion. Some, as we have seen, regard it as confirmation of the seriousness of abortion and its impermissibility in all but lifesaving cases. However, other, more lenient commentators have related the discussion to quite different matters. Some have seen in it a permission for the utilization of any means to kill the fetus (just as one is not required to measure one’s means in stopping a pursuer). Others interpret it as confirmation of the lesser status of the fetus. Ordinarily, the Talmud does not permit setting aside one human life to save another, and since the fetus does not intentionally threaten the mother it cannot be said to be a pursuer in the strict sense. But it is “like a pursuer” in being similar to an animal or an inanimate object, which the Talmud allows one to jettison or destroy and which it elsewhere explicitly likens to a “pursuer” if it threatens a human life. Still others see this text as excusing the mother or physician from the obligation to compensate the father for his loss of the fetus. And at least one commentator has read Maimonides to imply that in such life-for-life cases the mother is *required* to undergo an abortion and may not even voluntarily subject her life to peril for the child’s sake.²⁸ In any case, these more lenient commentators tend to deny

27. Feldman, p. 276.

28. For a treatment of the commentary tradition on this matter, see Feldman, pp. 277-284.

that *Oholoth* may be taken to justify as strict a prohibition on abortion as the stringent party contends.

A second Talmudic passage often alluded to in defense of this position appears in Tractate *ʿArakhin* (7a). It deals with the case of a woman who has already been convicted of a capital offense and who is discovered to be pregnant. The question is, may the execution be delayed — even for one day if need be — to spare the life of the child whom she is carrying? *ʿArakhin*'s answer is blunt:

If a woman is about to be executed, one does not wait for her until she gives birth: But if she had already sat on the birthstool, one waits for her until she gives birth.

In the Gemara or commentary that follows this Mishnah, the assumed reason for the ruling is given:

It is necessary to teach it for one might have assumed since Scripture says: *According as the woman's husband shall lay upon him* (Exodus 21:22), that it [the unborn child] is the husband's property, of which he should not be deprived, therefore we are informed [that it is not so].

This is a dramatic text. Superficially, it seems ghastly, which may be why modern Reform or Conservative defenders of the right of abortion rarely cite it as evidence of Jewish thinking on abortion. Nevertheless, within a context where capital punishment is assumed, what is noteworthy is the fact that the major concern in this passage is directed toward the suffering experienced by the woman. As commentators note, she is naturally in anguish about her impending execution. Hence, no delay is permitted if this prolongs her suffering by even a few hours. The concern for her is evidenced as the Gemara on this text continues:

What is the reason [for this teaching]? — As soon as it moves (from its place in the womb) it is another body, Rab Judah said in the name of Samuel: if a woman is about to be executed one strikes her against her womb so that the child may die first, to avoid her being disgraced [by her bleeding should a living child emerge].

The import of these passages, therefore, is that the mother's feelings radically take priority over the fetus's life and over the father's property rights in the fetus. The prospect of extending her suffering or of worsening it by adding an element of physical shame suffices to justify feticide. Once the child has substantively passed through the birth process this permission is suspended, but full legal sanctity does not attach to the pre-term child. Clearly this text is not an eccentricity. It is in direct continuity with the halakhic interpretations of Exodus 21:22 and with some leading commentators' interpretation of our previous text from *Oholoth*. Throughout all of these interpretations, the conclusion is the same: the fetus is not a "life," a *nefesh*; in the eyes of Jewish law it is not legally a per-

son.²⁹ Prior to birth, therefore, any significant threat to the mother's physical or emotional well-being justifies the termination of a pregnancy.

A third and final major basis of the more lenient view goes even beyond the matter of abortion and introduces a distinction between viable and non-viable *post-natal* life. Several classic Talmudic teachings are relevant here. One is the teaching that any killing of the infant before thirty days of age is not punishable as homicide. The mishnah for Tractate *Sanhedrin* (79a) states:

If he intended killing an animal but slew a man, or a heathen and he killed an Israelite or a prematurely born and he killed a viable child he is not liable.

This teaching requires explanation. Elsewhere in the Talmud, a child of even one day of age is said to be fully a legal person and its killing is a capital offense. However, since the rabbis were not in a position to determine whether any pregnancy had really gone full term, they judged that any child younger than thirty days might be premature and potentially not viable. Hence the suspension of legal liability for killing in this case. The fact that the post-partum infant is here arrayed alongside animals and "heathens" makes us wonder about just how they viewed the moral status of the child at this age. Nevertheless, this teaching clearly indicates that the rabbis were very cautious about giving full legal protection to a being whose survivability was in doubt.

Much the same perspective is picked up in the very different context of mourning rites. In Tractate *Mo'ed Katan* (24a-24b) we read of a graded series of ritual requirements in treating deceased infants:

Any infant up to thirty days old is carried out in arms and buried by one woman and two men, but not by one man and two women [for reasons of propriety] . . . And they [the people] do not stand in line on the [immature] infant's account, nor do they [need] to recite the mourner's benediction, nor tender the [usual] condolence to the mourners. An infant thirty days old is taken forth [to burial] in a case. R. Judah says: not a case that is borne on the shoulder, but one that is borne in the arms; and the people stand in line on its account, and recite the additional mourners' benediction and tender the usual condolences to the mourners. One twelve months old is taken forth [to burial] on a bier . . . [and] [F]or anyone taken out on a bier the public [should] show their distress . . .

As some have noted, these teachings reflect the circumstances of very high infant mortality in which our ancestors lived. But they also reflect a sensibility which approaches legal and religious personhood not as a definitive reality dictated by biological facts so much as a status acquired through a process of physical maturation and social incorporation. This does not mean that the rabbis allowed the treatment of individuals to be made a function of subjective estimates of "social worth." On the contrary, theirs is a strict legal and religious tradition which views whatever norms are identified as sacred and as applicable to all relevant indi-

29. Babylonian Talmud, Tractate *Sanhedrin* 72b.

viduals in a class. But within and behind these norms we can perceive a judicious reluctance to vest deep emotional or legal concern in human life during some of its earliest stages.

With these bases in mind, we can now quickly review the more lenient specific body of contemporary teaching about genetic disease and genetic medicine which they help to form. This review can be very quick, indeed, because we are speaking about a handful of commentators and dissenting modern opinions. Most of these views base themselves on a ruling by the eighteenth century Rabbi Jacob Emden. The question before him was whether an adulteress might hide her crime by aborting her bastard child. Part of Emden's response was based on an ingenious application of the ²*Arakhin* text. Since the mother would be put to death if tried and convicted of her crime, said Emden, and since Jewish law allows killing the fetus in such cases, this child may be regarded as notionally dead and its life may be taken to save the mother's! But Emden also went beyond this. He ruled that, in view of the reduced valuation of the fetus in Jewish law, abortion is permissible in any case of "great need" on the mother's part. Her life, he argued, did not have to be in danger.³⁰

In our own day, Emden's position has been expanded by some commentators, and one writer, for example, has extended it to permit abortion for even a "slim reason" on the mother's part.³¹ This same ruling has become a major precedent in the lenient approach to the question of aborting a fetus with Tay-Sachs disease. In an important decision published in 1976, Rabbi Eliezer Waldenberg, former head of the Court of Jewish Law in Jerusalem, ruled that it is permitted to abort a Tay-Sachs fetus until the seventh month of pregnancy. He later extended this permission to any other case of "great need," including the case of a deformed Down's Syndrome fetus and fetuses with other genetic conditions that would place the family or the mother under great stress.³² Some other lenient commentators have arrived at Rabbi Waldenberg's conclusion by a slightly different route. They have ruled that, since the severely deformed fetus is not a viable life, aborting it in late pregnancy is permissible under Jewish law.³³ Interestingly, this same logic would seem to be equally applicable within Jewish teaching to immediately post-natal life where viability is in question. I know of no writers who have developed the tradition in this way but such developments are not out of the question. More likely, this line of thought might be taken to justify a greater allowance for cessation of therapy or support in cases of severely deformed newborns. In any event, we shall have to await these rulings.

30. See David Sinclair, "The Legal Basis for the Prohibition of Abortion in Jewish Law," *Israel Law Review* 15 (1980), 124; also Feldman, pp. 288f.

31. Feldman, p. 291.

32. Sinclair, 126f; Feldman, pp. 291-294, reviews several other lenient rulings with respect to defective fetuses.

33. Jakobovits, "Tay Sachs Disease and the Jewish Community," p. 17.

Certainly the resources exist within Jewish law, where infants well past the stage of birth are not placed on a par with established children, for reconsidering norms in the treatment of those newborns so impaired that they would never have survived before the innovation of modern medical care.

On this point, I will conclude. I have tried to suggest the substantial tensions that exist within classical and contemporary halakhic teaching today about the range of choices that bear on modern genetic counseling and neonatal care. On the one hand, there is a stringent Orthodox view that is as quick as much conservative Protestant and Catholic thought to affirm the sanctity of human life at any stage and that is willing to delimit sharply the sphere of legitimate parental decision-making. But there is also a more liberal position, which has firm rooting in the legal tradition, and which might counsel considerable parental autonomy in decision-making in this area.

My own opinion is that this liberal position is closest to the deeper traditions of Jewish thought about reproductive responsibility and personhood. I base this view partly on a reading of the fundamental texts, and partly on the observation that there are sociological factors that have contributed to the emergence of the stringent Orthodox position. One is the severe demographic pressure that led medieval decisors to emphasize the scope of the obligation to procreate. Another is the perceived need by some commentators to uphold the strictness of Jewish teaching on sexual-moral questions. One student of this issue, David Sinclair, has stated that recent trends in rabbinic thinking about sexuality seem to be "motivated in the main by a concern for deteriorating moral standards, rather than with strict legal analysis."³⁴ He bases this claim on the fact that many conservative halakhic writers have actually justified rulings in ambiguous cases by lamenting a decline in Jewish observance and by expressing the hope that Jewish morals will not be found wanting in any comparison with strict Protestant or Roman Catholic teaching. Thus, the social forces that earlier forced some Catholic thinkers into a defensive and conservative stance on sexual moral matters now seem to be at work in the Orthodox Jewish community as well.

Be this as it may, my own strong preference for the liberal wing of halakhic interpretation is most influenced by the sense that it is truest to the traditions of Jewish thought. I would further add that these traditions merit consideration by all of us today as we seek to come to terms with the novel problems posed by genetic and neonatal medicine. In particular I

34. Sinclair, p. 125. Interestingly, Jakobovits is not unaware of the conservative drift of much of the contemporary halakhic commentary which he feels compelled to report, and he suggests that this drift may have something to do with the movement of rabbinic scholarship from the practicing rabbinate to the academy. It seems to be his view that academic scholars may be less in touch with the realities of medical practice and family life than are those rabbis who work daily with their congregants (*Jewish Medical Ethics*, p. 259).

would single out two aspects of this more lenient tradition for our consideration. One is the sense that human life is not just a biological reality but something that is partly shaped and validated by personal maturation and the possibility of social incorporation.³⁵ In this respect I believe that we should all reconsider the wisdom in the traditional Jewish teaching that would distinguish not just between our treatment of the fetus and the child — but also between our treatment of the healthy full term child and one born prematurely (who may suffer as a result from serious genetic anomalies).

Second, I would emphasize this tradition's concern and solicitousness for parental — and especially maternal — well-being. As David Feldman observes, the idea that "the mother's pain comes first"³⁶ has formed a governing principle in Jewish thinking about abortion. It seems to me that we find here also the decisive factor in all of our decisions in the reproductive area. The question in genetic abortion or in difficult decisions of neonatal treatment seems to me to be not what you or I think about those decisions, nor what the medical team happens to think, nor what some government official thinks, but what are the mother's own most considered and informed wishes. Her wishes and her suffering should be foremost, if for no other reason than that they will affect the life of every child she bears. Maternal decision-making in this area will not be infallible; no human judgment ever is. But it is probably the least fallible and most important locus of decision that we can identify. It seems to me noteworthy that, from the earliest sources, a major tradition of Jewish thought has tried to retain this focus on the mother's welfare and autonomy.

35. For a fuller discussion of this approach to matters of personhood, see my article, "Towards a Copernican Revolution in Our Thinking about Life's Beginning and Life's End," *Soundings* 66:2 (Summer 1983): pp. 152-173.

36. Feldman, pp. 291, 294.

The House of Israel Seen From Afar

JAMES P. FARNHAM

IDENTITY CRISIS IS NOT LIMITED TO ADOLESCENCE. It is part of the average person's experience to wonder sometimes just who he or she is. Indeed, periods of uncertainty are desirable, for they show that our lives are developing, that we are not frozen in an identity from the past. A person whose sense of self has not significantly changed over the years is like a mummy wrapped in what was. Such a person may be incapable of having an identity crisis, and such a person may also be incapable of spiritual and intellectual growth.

These observations apply to institutions as well as to individuals. Institutions should experience identity crises if they are to live fruitfully in the present, since, like individuals, they can spend too much time in the past and lose contact with the developing present. Like individuals, they need to stop occasionally to ask who they are, why they exist, and what difference they make to the life that we all share together.

I sense an identity crisis now in Judaism, at least in many liberal American Jews. It is a sign of life, but it is accompanied by uncertainty about the future. One hears speculation about purpose of being a Jew in America. Many American Jews are so assimilated that they are practically indistinct from other Americans. This may be fine, since to stand out and to be different from the majority is often to invite negative attitudes and negative deeds. However, this high degree of assimilation leaves some Jews wondering whether there is any reason for maintaining a distinct Jewish identity through values, attitudes, and lifestyle. Of course, one can say that the Hebrew tradition must be preserved, but such motivation can be remote and abstract if one is not convinced that this tradition has a relevance to the present and that, without it, life in general would be diminished.

Learning what other people think we are can affect what *we* think we are. Comparing our image of self to another person's perception of us can be revealing. Sometimes it is pleasant, sometimes it is upsetting. Sometimes we discover that we are much more appreciated by others than we suspected. Sometimes we learn otherwise.

These thoughts come often to my mind of late, for I am a Jew, but I chose to be a Jew, and I can remember what Judaism looked like to me from the "outside" while I was studying it in preparation for my formal *gerut*, my statement of affiliation with Judaism. I chose to become a Jew because of Judaism's unique and ancient articulation of monotheism and because of its credibility for me as an ethical tradition. In my own

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search for meaning I came to realize that Judaism is unique, has no substitutes, and *does* make a difference in the world. While it would be presumptuous of me as a recent Jew to lecture my seniors about the uniqueness of our religion, I know what it means to discover and to grow to love Judaism in a way that born Jews can never experience. Judaism has never been for me a part of life to take for granted. It is a part of my life which had to be discovered, studied, loved, and then consciously chosen by me as an adult. Thus, I have seen it from the outside like an explorer who rejoices in the discovery of a newly found land. As we sometimes get new awareness of our home town from the appreciation of people only recently moved there, so Jews who have lived within Judaism all their lives may find value in the thoughts of one who has recently come to it.

My religious upbringing was traditional, orthodox, and Christian. Faith was a given in one's life. It was said to be "a gift from God." One was raised to believe that some were fortunate enough to have been chosen by God for the gift of Christian faith. Just what merited inclusion or exclusion was never clear, but one was somehow lucky enough to be chosen. One did not examine one's faith critically. Indeed, to question its validity was considered sinful, and it generated guilt. So, one grew as a child convinced that he had been specially selected by God for the gift of faith and equally convinced that the worst thing a person could do was to raise questions about the validity of this faith and the churches in which it was practiced — it was, of course, best practiced in one's particular denomination.

It is still amazing to me to realize how late any critical examination of religion came in my life. Whenever doubts rose up, they were repressed as "temptations to the faith." Interestingly, the doubts grouped themselves powerfully and assaulted my Christian faith on the venerable problem of evil. During one of my first years as a college teacher, a student of mine was killed in a car accident. He was intellectually superior and was committed to using his talents to better the world, to what the Hebrew tradition calls *tikkun olam*. It was not his death in itself which I found intolerable, for I had had the usual exposure to death that every person has while growing up and had learned to make the usual accommodations. It was the fact that this was a gifted person killed on his way to a social-action meeting which I found intolerable. Though I did not think of it at the time, I was like Job asking why the good man gets killed trying to make a better world. For me this situation was, to use Jaspers' term, a *Grenzsituation*, a Boundary Crossing. I had stepped from the land of faith into the new land of religious doubt and denial. While this foreign land filled me with strangeness, I knew that it was the only place for me to be, honestly and authentically, at that time in my life.

In the years that followed, I vacillated between agnosticism and non-theism. While I always retained a respect for the religious experience,

especially for the need for faith, I certainly did not think that faith was authentic for me. I felt that the existence of God was human wish-fulfillment which, though I respected it, I could not share in it. During this period my children grew up. My wife and I exposed them to various experiences, Christian and Jewish, while always letting them know that they were not being “raised” in a particular religion, that if they were later to join a religion, it was to be of their own choosing and out of their personal desires and needs. I do not regret this pattern a bit, because it respected their own developing freedom to define themselves as persons and to determine what meaning they would create in their own lives.

Paradoxically, during this period my own need to believe in God increased to the degree that it demanded fulfillment. The contradictions and absurdities of experience became so critical that I had to believe in God or risk succumbing, at least intellectually and spiritually, to nothingness. As Miguel de Unamuno says, we believe in God to save our universe from nothingness. In a tone less cordial to faith, an associate of mine remarked that I had gone “running back to God” in a mid-life crisis. There is truth in both of these statements. The first helped me to articulate my own thoughts, but the second comment did not invalidate my decision, as it was intended. I came to realize from my own life experience that believing in God is an act of the will, the will to believe, the will to meaning, as Viktor Frankl calls it. I came to think that rational arguments for faith in God are composed after the act of faith itself has been made, often to justify it to a world in which only the rational and the intellectual are accepted. In fact, I made my own version of Kierkegaard’s blind leap of faith. In *Fear and Trembling* Kierkegaard says that faith in God is not intellectual, for God is beyond reason, just as the understanding of the infinite is beyond the ability of the finite. We cannot comprehend God; we simply believe in God out of our need to believe. We cannot argue rationally to the existence of God, despite the opinions of some mighty philosophers. Kierkegaard writes that faith begins where thinking leaves off. I realized that I needed to believe in God in order to make sense of my small square mile of existence. So I acknowledged the need, and I freely willed to believe in a creative and providential principle called God.

My next concern was with the expression or form which my belief would take. The Holocaust was the occasion for my coming to love and then to choose Judaism as the most honest religious expression for me. For several years at that time, I had been teaching a college course on Holocaust literature. The Holocaust had long attracted me because of its ethical and theological paradoxes. There is a significant body of literature coming out of it and the more of it that I read, the more I realized that my students would benefit from having this body of literature available to them. I presented the literature as a meditation on human experience during a unique period of history, and I have always focused on it as a way of observing human nature in general, both the good and the bad.

The course was successful from the beginning and continues to be well received by the students who elect it.

It was one thing to prepare the literature itself for class, but it was quite another thing to prepare myself in the historical and cultural backgrounds of the subject. I realized that I needed to know much more about Judaism as a religion and as a cultural tradition. The more I learned, the more I appreciated, and appreciation lead to love and desire. I came to appreciate the thousands of years of loyalty to the Covenant which are the basis of Judaism. I heard clearly Judaism's imperative that, while God created the world, the quality of life in the world depends on the moral quality of our free actions. This was an existential focus on human action which appealed to my own sense of the meaning of life. We do not choose to exist; as Sartre says, existence is thrust upon us. The meaning which we make of our existence for ourselves and for others does, however, depend on us. Responsibility for self and for others was the existential imperative which I heard from Judaism. While I was not so naive as to think that Jews are more moral than other people, Judaism did seem to me to have a unique claim to ethical credibility. It may have failed its ideals at times, but its record contains less moral compromise, ethical equivocation, and inauthenticity than any other institution, which I know of, with a message for the world. Ethical self-reliance and an abiding sense of community and shared tradition: these were the qualities which moved me to start my formal study of Judaism with a rabbi. This lead to my formal espousal of Judaism in the temple where I am now a member.

Some friends with whom I have discussed my Judaism have suggested, with diffidence, that the choice is the result of a kind of Holocaust high, a too intense concern for the Jewish victims. One Jewish friend has called me, not unkindly, I suppose, "the Holocaust *mavin*." My reply is simply that you cannot love something until you know it in depth. My background study of Holocaust literature happens to be the portal through which I entered the House of Israel. Prior to that study I had only superficial knowledge of Judaism and had grown up with some mild symptoms of the anti-Semitism which Christian triumphalism still retains. My choosing Judaism is one of the few good things which, to my knowledge, came out of the Holocaust. It was the occasion for my study, and it lead to my love. Inspired particularly by the fidelity to God which I saw in many of the victims, I came to find expression of my own need for God.

Other people have suggested that my return to faith is an intellectual collapse, a regression to infantile dependency on a cosmic father figure. So be it. There is, I would hope, a child in us all whom we can still contact at times. There is nothing shameful in dependency, if at the same time we are carrying our responsibilities as best we can. The need for God is not intellectually embarrassing to me, nor do I view my Judaism as an adventure in the esoteric.

As we know, Judaism is a religion of the family. My wife and two teenage children are very important to my Judaism — though not in the usual way, since they are not Jews. They are important because they helped to make my Judaism possible. Our relationship on the matter of my religion has been marked by independence and respect, a tone which was set at the start. When I told my thirteen-year-old daughter that I was studying to become a Jew, her question was existentially right on the mark. She asked if this meant that she was, therefore, a Jew. Clearly, her own sense of her right to define herself was in question. I said that, of course, it meant nothing of the kind. I said that a person's identity is defined by him/herself, not by others. I reminded her that her mother and I had always told our children that being religious or not, having religious affiliations or not, was up to the individual, that we would always support any contact with religion which they freely chose but that we would never force it. Any fear that she would have to march in her father's footsteps vanished. She knew that her freedom to define herself as a person was being respected. I think that it is because she knows that she is free that she went recently with me to Passover services. Because she chose freely to come, my happiness in sharing my Judaism was great.

My son maintains a greater distance on the subject, but I think that is because, at seventeen, his developing autonomy is more central to him than it is to his younger sister. Innovative thought has always attracted him. Leaps of intellect and leaps of imagination have always won his attention. He saw from the beginning that my becoming a Jew was an unusual action, and he knows that it required much thought, study, and time. He knows that it was not a frivolous decision and, because of the seriousness of the intent he respects my decision though, like his sister, he stated his independence at the start.

My wife's attitude has, of course, been most important in our family. She said at the beginning that, if being a Jew was good for me, then it was fine with her. She already had a cordiality to things Jewish, but most important in her attitude was the fact that she did not see my Judaism as a threat to her own religious belief. While she is a theist, she has long since disavowed any denominational ties to church or clergy. My Judaism is a positive thing to her, because it does not threaten her. She knows that it is not being forced on her and that the autonomy of all family members is respected. Without this kind of generous respect from my family, being a Jew would be most difficult for me. Their desire to be with me in the temple when I made my formal affiliation with Judaism was the most loving support I could have had.

The response from people outside of the home has been generally positive, as far as the response has reached my ears. Jewish colleagues and friends (all religiously liberal people) have had positive things to say and have asked many questions. My becoming a Jew seems to be a mirror in which they look for a glance at themselves as Jews. Most important, they

give me the feeling that we are sharing Judaism together. This is very reinforcing to my own Jewishness. When one is new to a group, one is, to some degree, liminal and vulnerable, still somewhat betwixt and between, as any newborn is. When there are cordial elders to welcome the newcomer, his or her identity with the group is more quickly cemented. Simple acts like the giving of a Passover Plate by a Jewish friend are symbolic acts with deep reverberations.

A few negative responses have come from relatives and from old friends. Paradoxically, these negative responses have taken the form of non-responses. A non-response is, however, very much a response, whether it be silence from the mouth or a looking away of the eyes. It is a refusal or an inability to acknowledge a person or a thing for what he or it is. My Judaism is, apparently something that these people do not wish to respond to or cannot respond to. I take this as a wish on their part to deny Judaism, in general, and in particular as it is manifested in me. Thus, for example, an in-law got up and walked into another room to sit by himself when his wife asked me, at a family gathering, about my becoming a Jew. More recently, his growing ability to acknowledge me as a Jew came in a perfunctory follow-up to his wife's Passover good wishes. Clearly, there is hope. I have tried to be patient and to give people mental and emotional room. I have also to remember that my avowal of Judaism is a threat to those Christians raised on the triumphalist idea that the validation of Christianity lies in the withering away of Judaism. For the most part, however, people have responded to my Judaism either with enthusiasm and questions or they have remained silent. In this there are no grounds for me to complain.

I choose Judaism freely. Its long tradition of ethical questioning and moral striving, its authenticity in times of both failure and success inspires me. It makes me glad to be a Jew, though I know already that it is not easy to be a Jew. I would be too zealous if I presumed to preach to other Jews on the riches of our tradition, newcomer that I am to that tradition. However, I have tried to describe here the beauty of the House of Israel for one who has seen it from a distance and has only slowly, in his own adulthood, come under its roof. Those who know the interior of the House of Israel far better than I will ever know it might have their appreciation increased by one who has only recently entered, and I say this with humility. Judaism has a theologically and historically unique message for the world. This message can continue to make a difference to the quality of life of all people.

Covenant — Jewish Universalism and Particularism

DAVID POLISH

Introduction

THE *BRIT MILAH* IS USUALLY UNDERSTOOD AS an exclusive relationship between God and Israel, as particularistic, separating Israel from others. There is warrant for perceiving it in that light. During a *brit milah* among Sephardic Jews, the father of the new-born son recites, *Im eshkhahekkh Yerushalayim*, (“If I forget You, Jerusalem”), thereby embracing the highest worldly aspirations of the Jewish people and dedicating his son to them. The *v’shamru* prayer for *shaharit* on Shabbat declares: “The uncircumcised may not share in its (Sabbath’s) rest.”

There is also reference to circumcision as a requirement for attaining the world to come. “The world is reserved for the righteous, that is, Israel.”¹

This is based on the assumption that a precondition for the after-life is circumcision, thus qualifying nearly all Jews, except the most evil, and including infants who died and were circumcised before burial. Non-Jewish *arelim* can be a deterrent to personal Jewish redemption. As Jacob lies dying, he adjures his sons not to allow an *arel* to touch his coffin lest the *Shekhinah* depart from him, presumably lest his entrance to the next world (*olam ha-ba*) be thwarted.² This would refute the conventional belief that righteous gentiles may enter *olam ha-ba*, and is closer to the Christian idea of “no salvation outside the church.”

Yet there is also warrant for viewing the *brit* as transcending the bounds of particularity. Nothing could make this clearer than God’s promise to Abraham: “All the families of the earth shall be blessed through you.” The *brit* with Abraham is thus not self-contained and, in fact, requires the world for its fullest consummation. In addition, there is another *brit* which, while moving in its own orbit, also intersects the *brit* of Abraham and Israel, each exerting a centripetal pull upon the other. It is the *brit* of Noah. Yet, as a prelude to examining it, we must search for covenantal clues in the creation of Adam who is, at times, explicitly perceived as a precursor to Noah’s *brit*. In the Genesis account, an overture to this is the implicit covenant with humanity in which God blesses newly

1. *Yorah Deah, Hilkhoh Gerim*, 268b.

2. *Gen. Rabbah* 118b.

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created man, places the divine “image” upon him, gives him the earth to possess, and hallows the seventh day (as a sign) on which He ceases His labors. Even after the expulsion from Eden, none of these divine enactments is annulled.

Hosea equates the sinful nation with Adam, both of whom “transgressed the *brit*.” (Rashi differentiates the prophet’s Adam from “mankind” by identifying him as “*Adam Ha-rishon*.”)³ This is not the only extra-Genesis reference in Scripture to Adam, about whom Job asks, “did I hide my transgressions like Adam?”⁴ The theme of Adam’s breach of God’s command is, as in Hosea, expanded into a proto-covenant in Midrash and Talmud. While the technical term *brit* is not used, the dialectic of a cosmic call to human responsibility and response is employed. There is even an explicit indication that Adam was a predecessor of Noah in receiving a universal law. “Seven commandments were ordained for Bnai Noah . . . R. Judah says that Adam was commanded only concerning idolatry. — R. Judah ben Beteira says, ‘also blasphemy.’”⁵

In this context, Adam becomes the potential guarantor of the world’s well-being. God shows Adam *all* of the trees in Eden and says to him, “*Everything* I have created, I have created for you. See to it that you do not spoil or ruin my world, for should you spoil it there will be no one after you to repair it.”⁶ Here is a “scandalous” concept, that *all* of the trees in the garden were under Adam’s stewardship. In addition, there is the intimation and the warning of what is to occur if Adam and his kin defy that warning. It is the intimation of the Flood, except that Noah did, indeed, repair the world. The theme of universal law is stated most extravagantly in “*Adam Ha-rishon* was worthy of receiving the Torah.”⁷ This is of a piece with the theme of Israel’s Sinaitic contemporaries who were deemed eligible for receiving the Torah but rejected it. In Adam’s case, however, the concept is even more daring.

Thus, as he evolves primarily in Rabbinic literature, Adam appears as primordial covenantal man. He is no longer solely the one who, both in the language of God and the serpent, might be like God. He becomes subject to a pre-Toranic law, applicable to all his descendants, a law that is moral, that, but for his rebellion, might have been the Torah itself, and upon which, even in its attenuated form, the existence of creation depends. From Genesis Man, a potential threat to God, he emerges as Covenant Man, admonished to be a moral guardian of the world. He is transformed into Noah’s moral ancestor.

3. Hosea 6:7.

4. Job 31:33.

5. *Sanhedrin* 56b.

6. *Kohelet Rabbah*, 7.

7. *Genesis Rabbah*, 7.

The major thesis of this presentation is that, in its fullest sense, the *brit* is universal as well as ethnic. Subsumed under this and deriving from it are five other propositions which attest to the ethnic side of the *brit*. First, the *brit* is both pluralistic and unitary. Second, the *brit* is manifested in theophany and also in anthropophany. Third, whatever the ways in which it is perceived, it is redemptive, with the Land as the locus of final redemption. Fourth, it is ethically grounded. Fifth, all of these components bear heavily on Jewish life today. All of these are subsumed under the God who manifests Himself in history and to Israel.

We stress the *brit* with Noah because, unlike the account of Adam, it is explicit in the Biblical account. Through the primal universal encounter with Noah, God prepares us for the covenantal encounter with Abraham and then with Moses, and then with all Israel. In addition, before entering into the *brit* with the fathers of the People and then with the People itself, God chooses to forge a *brit* with humanity. This *brit* is more than a recognition that God is concerned with humanity, and that as an overture to the appearance of Israel on the cosmic scene, He pays due heed to all of His creatures. It also suggests, both textually and even more in Rabbinic and Apocryphal literature, that Israel is inseparably bound up with humanity, in fate and in destiny. Israel's rescue from a reign of evil in water is related to the rescue of the new humanity as embodied in Noah and his family.

They (the Egyptians) said: We cannot subjugate them by means of water, since God declared that He would not (again) bring a flood upon the world. God said: Fools, I declared that I would not (again) *bring* a flood upon the world, but you will descend into the (existing) flood. Hence, He drowned them in the sea.⁸

Noah's significance and relationship to the Patriarchal covenants are evoked in a most awesome part of Jewish liturgy, in the *Zikhronot* for Rosh Ha-Shanah. "You remember Noah in love . . . His memory comes before You so that his seed might increase like the dust of the earth . . . (You have said in Lev. 26:42) I shall remember My covenant with Jacob; My covenant with Isaac; I shall remember My covenant with Abraham; and the earth (*arez*) I shall remember." The Biblical reference clearly applies to the land of Israel. In the Noah context, is *erez* also an allusion to the earth? And "dust of the earth" evokes the promise to Abraham.

Following the miraculous delivery from Egypt, Moses transmitted God's law to the people amidst awesome circumstances. Following the abatement of the waters, God transmitted universal laws to Noah under the marvelous sign of the rainbow. The origin of those laws is disputed in Jewish literature. One position asserts that the Noahides took the laws

8. Midrash *Vayoshah*.

upon themselves, “*kibblu aleyhem*.”⁹ Rambam contends “*she’niztavu*,” they were commanded by God.¹⁰ The presentation of laws, however incomplete, to the family of Noah, becomes a universal prefiguration of *Matan Torah*, the transmission of Torah. Those laws are not isolated from Jewish concerns, not only because they are related in content to Jewish law itself and, especially to the Ten Commandments, but because Judaism is concerned with their observance by Noah’s descendants. We are mindful that the laws of Noah may have been promulgated for non-Jews living under Jewish jurisdiction in the Land of Israel. Under those circumstances which assume the concept of submission to Jewish government — *kibblu aleyhem* — provision is made for the enforcement of those laws by Jewish courts. But if we follow Rambam — *she’niztavu* — who, in turn, follows the Biblical text, we draw a different conclusion, that even though the Bnai Noah may be beyond Jewish law’s enforcing power, they are still bound to their original covenant with God. Yet this distinction is not consequential, since Rabbinic tradition is similarly divided on whether the Torah was accepted by Israel or imposed upon it by God. Willing or not, Noah’s descendants and Israel alike, came forever under both the promise and the demands of their covenant.

The consciousness of Israel’s connection to all of this manifests itself again and again in Scripture. When Isaiah wishes to convey God’s ultimate commitment to Israel’s unending endurance, he cites “the waters of Noah” and analogizes them to a *brit shalom* for Israel.¹¹ (This does not mean a different *brit*, any more than does Jeremiah’s *brit hadashah*, but, rather, the confirmation, once and for all, of Israel’s original *brit*.) Equally striking is Ezekiel’s linkage of Noah and Job to Daniel (or, as others would have it, to Danel, another non-Jew), as members of a saintly pantheon who would not be able to save a sinful Israel.¹² For Ezekiel, that archetypal Judeocentric prophet, to invoke Noah as the prototype of saintliness is to confirm the connection of Biblical Judaism with its transparticularist world, however attenuated that connection did, at times, become. The connection to the non-Jewish world is also evident in God’s promise, first to Abraham, then to Sarah, that kings would spring from their loins. Hosea evokes Noah’s covenant as the paradigm of the ultimate redemption of all of life. Sanhedrin 56 states: “Every *mizvah* enjoined upon Bnai Noah and repeated at Sinai, was addressed to both (them and to Israel).” Also, “The burning of the Temple was foreseen from the days of Noah.”¹³

In Rabbinic literature, “Noah is listed among the five who saw a new

9. *Babba Kama* 38a.

10. *Mishneh Torah*, *Hilkhot Melakhim* 8:11.

11. Isaiah 54:9.

12. Ezekiel 14:19.

13. Midrash *Tad’sheh*, 9.

world along with Joseph, Moses, Job and Mordecai.”¹⁴ Urbach cites Talmud and Midrash where Noah is depicted as an intercessor between man and God, and whose birth, proclaimed in advance, was accompanied by remarkable circumstances. He had exceptional spiritual and moral faculties and all marveled at him when he was an infant and a child. His knowledge came directly from God, he divined mysteries, foresaw the future, had mastery over nature. He was a redeemer of people, also saving them from the wrath of God and nature, a helper of the poor and the suffering.¹⁵

The Book of Tobit refers to “Noah, Abraham, Isaac and Jacob as ‘fathers of old’.”¹⁶ In Jubilees, included in a lengthy account of the Flood, we find the following: “Of the children of Israel it has been written and ordained: if they turn to Him in righteousness He will forgive all their transgressions.”¹⁷ The celebration of Shavuot is attributed to Noah,¹⁸ although note is made of its rejection by his sons. Shavuot is also identified with the covenant with Abraham. The Biblical Noah who receives the law becomes the transmitter of law and a teacher of morality.¹⁹ In the blessing by Jacob, the following is included: “May He give you all the blessings, wherewith He blessed Adam and Enoch, and Noah and Shem.”²⁰

In Tobit and Ben Sirach, “Noah is discussed in terms which indicate that he was considered in his age to be an equal of the Hebrew patriarchs.”²¹ Most compellingly, Judaism has never rejected the laws of Noah as irrelevant. Unlike Christianity, it saw an important place for those laws without suggesting that it had come to do away with the old dispensation. It added to the laws; it did not abolish them. Nor is Noah demoted and even rejected, as is Moses by Christianity. Judaism is a linkage of law from law, whereas Christianity is a discontinuity from the Law.

Thus, Israel has an unbreakable relationship with Noahides, even if it is often violent. They were first given ethical *mizvot* and these were revealed. The Noahides were the first to be explicitly covenanted. Noah became a prototype of the recipient of the law, and a prototype of righteousness in our literature. He became a paradigm of “the righteous among the nations,” from Jethro to the groves of the righteous in *Yad Va-Shem*. He and his family were the first survivors of a massive catastrophe. So there is a relationship of spirit as well as an interrelationship of

14. *Genesis Rabbah* 30:8; *Esther Rabbah* 6:3.

15. Efraim Urbach, *Hazal, Emunot V'Deot* (Magnes Press), p. 435.

16. *Tobit* 4:12.

17. *Jubilees* 5:17.

18. *Ibid.*, 6:18, 19.

19. *Ibid.*, 7:28.

20. *Ibid.*, 29:27.

21. Daniel Polish, *The Flood Myth in the Traditions of Israel and India* (Harvard Press), pp. 302, 303.

fate. There are duties *of* the Noahides; there are moral duties *to* them, “for the sake of peace.” The family of Noah were the first witnesses to *hamas* (lawlessness) on a worldwide scale. The Noah account is, therefore, an *ur*-prophetic text. Altruistically and selfishly, Israel has had an interest in the sons of Noah adhering to their *brit*. Jews also have an interest in God adhering to His *brit*.

There is also an implicit recognition that Israel's well-being is bound up with the sons of Noah. There is, first, the curse of *hamas* which brought on the universal catastrophe and which the chastisement of the flood was intended to bring under control. Second, there is the dread of another catastrophe which could befall all of humanity, Israel as well, because, as one component of Rabbinic consciousness recognized, the world could next be engulfed by fire.²²

If nothing else, Jewish tradition recognized that the first *brit* served not only to lead toward the introduction of the People of Israel, but to link Judaism to humanity irrevocably. In addition, this linkage is weighted with moral imperatives. The first echoes of communal justice, of the prophetic cause and effect of social violence and retribution are imprinted deep in the narrative. (It could be argued that this already appears in the Cain and Abel account, but that event does not yet bear on social and communal evil.)

To be sure, there are invidious as well as laudatory references to Noah. “Should any of the Bnei Noah observe Shabbat, they would not only receive no reward but even deserve death.”²³ This confirms that here, as in other areas of Jewish thought, there are conflicting opinions, but that does not diminish the weight of the positive position.

Daniel Polish has called attention to the perception, by some, of Rabbinic approval of Noah and his laws as patronizing. This approval is analogous to that aspect of Christian theology which views Judaism as a mere forerunner to Christianity, but little else. But he also points out that the Rabbinic view can be perceived as recognizing the symbiosis of Judaism and the universal mandate of Noahism. Patronizing or not, the Rabbis understood the universal nature of the moral law which preceded Sinai and with which they identified. We take note of Rambam's recognition of Christianity and Islam bearing Judaism's spirit throughout the world. We can also credit Noahism with bringing humanity under the law of the same God whom Judaism called YHWH.

The Pluralism of the Brit

Kabbalistic and Rabbinic literature understood that there were varieties of covenantal experience. There were *brit milah* (circumcision), *brit keshet* (rainbow), *brit melah* (salt), *brit yesurin* (suffering), *brit kehunah*

22. *Tosefta*, *Taanit* 2.

23. *Vayikra Rabbah*, 25, 15.

(priesthood).²⁴ Also, “God made three covenants when Israel went out of Egypt.”²⁵ This may refer to the covenants at Moab, Horeb, and the second set of commandments.²⁶ Finally, “seven ancestors made a covenant — Abraham, Isaac, Jacob, Moshe, Aaron, Phineas, David.”²⁷

These passages do not intend to suggest the existence of various different and unrelated covenants, but they do stress two other factors: first, they represent varying elements of the same covenant; second, in the case of the seven ancestors, the same covenant asserted itself and reconfirmed itself in a succession of generations, confirming our earlier thesis. All of the other covenants impinge directly on Israel's responsibilities to God. The *brit melah* is related to the heave-offering as “an everlasting law before God for you and your descendants.”²⁸ “The *brit yesurin* is proclaimed after the terrifying admonitions of *Ki Tavo* — “these are the words of the covenant which God commanded Moses to make with the children of Israel in the Land of Moab in addition to the covenant He made with them at Horeb.”²⁹ The *brit kehunah*, referred to in Nehemiah 13:29, may refer to Exodus 29:9 where the statute of the priesthood is referred to as “everlasting.” None of the covenants referred to in the Zohar are actually covenants but covenantal referents. The *brit yesurin* summarizes the consequences of violating the *brit*. The *britot* of *milah*, *keshet* and *melah* are external “signs” of the *brit*. The *brit kehunah* identifies the priest as an instrument of the *brit*.

The Unitary Brit

The congruence between *brit Avraham* and the *brit* at Sinai is striking. They are two covenants, yet one. It is not fortuitous that the first declares, “I am YHWH Who brought you out of Ur-Kasdim,” and the second opens with “I am YHWH Your God Who brought you out of the land of Egypt.” God is the first and enduring constant in the *brit*. A second binding component of both *britot* and a common denominator for all the varieties of *brit* experience is redemption, physical and moral. The people is rescued in body and spirit, or both. A third component of both covenants is the promise of the land after a time of suffering. “They will enslave and torment them . . . Then they (Israel) will go forth.” The bridge uniting both *brit* events is Exodus 2:24 where God hears Israel's outcry and “remembers his *brit* with Abraham, Isaac and Jacob.” As the people are prepared for the theophany, God declares to Moses, “You have seen what I did to Egypt . . . I bore you on eagles' wings.”³⁰ The covenant is invoked

24. Zohar *Hadash*, *Bereshit* 4.

25. *Tanhuma*, *Nizavim* 3.

26. Exodus 34:10.

27. *Derekh Erez Zuta* 1.

28. Numbers 18:19.

29. Deuteronomy 28:69.

30. Exodus 19:4.

— “keep my covenant.”³¹ A precondition for the inheritance of the land is allegiance to God which Abraham acknowledges — “He believed in God,” and which the people affirm at Sinai saying together, “All that God has said, we will do.”³² In the episode following the shattering of the tablets, the same components emerge. God announces, “I make a covenant.” He declares that He will expel the nations before Israel. He warns against “a strange God.” The Covenant with Abraham and the People is enhanced by parallel references to God at work in human history and inflicting judgment upon the nations. All of this is recapitulated in *Nizavim* “to enter into the covenant of the Lord your God . . . to the end that He may establish you . . . as His People and be your God . . . And the Lord your God will bring you to the land.”³³

The Covenants are then sealed by numinous acts — the *brit* between the animal parts, and the sacrifice by the elders, with the blood of the covenant and the book of the covenant, following the Sinai theophany.³⁴ Jeremiah refers to a parallel *brit* between the animal parts, but that *brit* involves the idolatrous act of the People in the Sinai wilderness.

Anthropophanic Covenants

Thus, a People is fashioned — a People chosen to be holy, a People redeemed from oppression, a People destined to have its land, a People whose God places moral demands upon it — born both of its suffering and His repugnance of idolatry. These unitary, nuclear factors, reiterated in varying events and by a progression of people in different periods and distinguished by God disclosing Himself to His People, constitute the paradigm for the covenantal process which informs Jewish life through the ages. That process is invoked as various men in Biblical history reenact it in what may be called an anthropophanic manner, i.e., it is transmitted by men by way of the Sinai model. David covenants with the people in Hebron.³⁵ He is represented as chosen by God to shepherd the people whom David had defended even in Saul’s days. When Yehoash is sequestered from the tyrannical Ataliah, a *brit* is consummated “between God and the King and the people, to be the people of God.” The People are liberated from internal tyranny and, as a consequence, the idols are destroyed. Both events involve *britot* in which the People, acting in God’s behalf, covenant to place the monarchy into the hands of God’s anointed. It could be argued that, in these events, the *brit* has been politicized and the gravity of the covenant has, consequently, been debased. This may partly have been the case, yet we should not overlook the implications of

31. Exodus 19:5.

32. Exodus 19:8.

33. Deuteronomy 29:11, 12; 30:5.

34. Exodus 24:7, 8.

35. 11 Samuel 5:3.

David's reign upon which both Jewish polity and messianism — the concept of the "King-Messiah" — is based. Nor should we overlook the religious reformation attendant upon Yehoash's reign.

Indeed, the reformationist motif accompanying the *brit* process as consummated within history by men is manifested in the Josianic episode.³⁶ The reformation is introduced by the public reading of *Sefer ha-Brit*, thus identifying the event and the people with the primordial moment. Then, "he made the covenant before God." This is done in the presence of "all the people, small and great," not fortuitously evoking "*atem nizavim*." The purification of the faith, the demolition of the idols ensues. The reinstitution of Pesah, neglected from the days of the Judges, also ensues. The hope that, as in ancient days, the People will be delivered, proves, however, to be futile. This is made explicit in Hezekiah's reformation: "I desire to make a covenant with YHWH, the God of Israel so that His wrath might depart from us."³⁷

The most striking reformationist note is sounded in Jeremiah's intervention in behalf of the Jewish slaves. Here there is a direct and unambiguous line to the *brit* of the wilderness which Jeremiah identifies as primarily theo-ethical. King Zedekiah had covenanted with "all the people" to liberate their Hebrew slaves. Following the manumissions, the People reenslaved them. Jeremiah's ensuing denunciation cites God's *brit* "on the day I brought them out of the land of Egypt, from the house of bondage." The quotation from the first pronouncement of the Ten Commandments, linking it unmistakably to the law of manumission, could not more emphatically assert the primacy of the moral law. In effect, Jeremiah virtually incorporates the law of manumission into the Ten Commandments. The word *brit* is recited six times, both as a reminder and as the knell of doom. The word *dror* (freedom) is repeated sardonically, inverting it from the promise of liberation — "You shall proclaim *dror* in the land" — to the terrible liberation of the avenging sword. The act of the people is equated with a demonic covenant with idolatry which the people, in a perverse imitation of the "covenant between the parts" and the sacrifice at Sinai, enacted *as a covenant* with the calf between whose severed parts they passed. Another inversion is proclaimed by Jeremiah — if the covenant is informed with the People's redemption, it follows that its violation means their destruction as in *Nizavim*. The "everlasting covenant," reiterated frequently in Scripture, is challenged. "I will render desolate the cities of Judah, without any inhabitant." For Jeremiah, the reformationist-covenantal moment had been desecrated. It was a ruinous failure.

Nevertheless, Jeremiah transcends despair. Faith in redemption overcomes fear of annihilation. Chapters 31-34 are the despairing,

36. II Kings 23:3.

37. II Chronicles 29:10.

exulting elegy of the *brit*. The Jeremiah who predicts “overthrow, destruction, disaster” (31-28) also proclaims, “He who scattered Israel will gather them” and “I will make an everlasting covenant with them.”³⁸

The *brit* is recapitulated, invoking the attributes of God when He covenanted with Moses, recalling the enslavement and the Exodus of the People, retelling the inheritance of the Land, mourning the People’s defections from God and His laws.³⁹ Faith and despair, ruin and restoration interlock.

An additional comment about Jeremiah’s “new covenant” (*brit hadashah*) (31:31) is warranted. The prophet’s statement that it will “not be like the covenant I made with their ancestors” superficially suggests a radical break with the original *brit*. The clear intent of the verse is, “The covenant which is the same covenant will be new in respect to the fact that Israel will not again reject it.” The ensuing reference to God’s implanting the Torah in the People’s heart is equally clear. It will be the same Torah; there is no reference to a different Torah, but it will be internalized. This is congruent with *Nizavim* which declares, “You shall circumcise your hearts” (by being faithful to the Law). Significantly, Jeremiah twice employs a metaphor which is strikingly similar to the Noah covenant.

Thus says YHWH who established the sun for light by day, the laws of moon and stars for light by night . . . If these laws should ever be annulled by Me . . . only then would the offspring of Israel cease to be a nation before Me for all time . . . If the heavens above could be measured, and the foundations of the earth below could be fathomed, only then would I reject all the offspring of Israel. (And) if you could break my covenant with the day and my covenant with the night . . . only then could my covenant with my servant David be broken.⁴⁰

The Renewal

In the context of our discussion, the pluralistic-unitary *brit* continues to be operative and renewable for the Jew. Although it is anthropophanic, it is far too early to plumb its implications to the full.

When leaders of the Yishuv, acting in behalf of the entire Jewish People, signed their names to the Declaration of Independence of the reconstituted State, Jews underwent yet another covenantal experience. Redemption, restoration, the commitment to a just society based on the vision of the Prophets, the invocation of *Zur Yisrael* (the deliberate ambiguity of the term notwithstanding), all converged at that moment. Many dimensions of the Exodus inform that moment. As Sinai began to possess the People only after a period of time, its continuing resonances only now

38. Jeremiah 31:10; 32:40.

39. Jeremiah 32:16ff.

40. Jeremiah 31:35-37; 33:20.

begin to penetrate the thunder and clamor of temporal existence. Certain categories need to be addressed in this context.

1. The People

The ethnocentric illustrations alluded to at the outset compel us to confront two issues which are inherent in the *brit* idea: first, what should be the relationship of the Jew today to the outer world, a world which, we acknowledge, has not been peacefully disposed to him even in the post-*Shoah* age; second, what are the Jewishly defined limits of ethnicity? We should deal with each question, not in the context of Jewish politics, but of the *brit*.

If, as has been suggested, Judaism is involved from the beginning with the children of Noah, there is no theological basis for a radical separation from the nations of the world, as some anti-Noahide passages suggest. Jews are understandably tempted to shut themselves out from universal concerns because of well-known and well-founded *religious* distrust and disappointment. It can be summarized in the statement on the Jews, proclaimed in 1948 by the first assembly of the World Council of Churches, meeting in Amsterdam:

We cannot forget that we meet in a land from which 110,000 Jews were taken to be murdered . . . (and) that we meet only five years after the extermination of 6 million Jews. To the Jews our God has bound us in a special solidarity linking our destinies together in His design . . . It was Israel to whom He promised the coming of His Messiah. We have, therefore, in humble conviction to proclaim to the Jews, "The Messiah for Whom you wait has come." . . . Only as we give convincing evidence to our Jewish neighbours that we seek for them the common rights and dignities which God wills for His children, can we come to such a meeting with them as would make it possible to share with them the best which God has given us in Christ . . . The establishment of the state "Israel" adds a political dimension to the Christian approach to the Jews and threatens to complicate anti-Semitism with political fears and enmities. On the political aspects of the Palestine problem and the complex conflict on "rights" involved we do not undertake to express a judgment . . . To the member churches of the World Council we recommend: that they seek to recover the universality of our Lord's commission by including the Jewish people in their evangelistic work.⁴¹

Having indicted the Christian world, the following may be added: Involvement with the covenant of Noah requires that the Jewish People be concerned with the moral well-being of the non-Jewish world, because both its own destiny and the destiny of humanity are involved. Concern for Bnai Noah does not imply a gullible disregard for the betrayals which Jews have experienced. It does imply that, as between the moral and worldly risk of engagement and the risk of isolation, isolation presents the greater peril. It is not an act of selfishness unworthy of theological discus-

41. *The First Assembly of the World Council of Churches* (London, 1948), pp. 160-163.

sion for Jews to warn, for our sake as well as others', that *M'ken derharget verren*." The Jewish bond with the covenant of Noah does not require theological partnership with other *faith systems*. It does, however, require a sharing with other systems in the struggle for world improvement (*Tikkun Olam*) and world survival (*Kiyum Olam*). The methodology for achieving this end requires special attention, but Jews must first come to terms with the issue, which is: can Jews live up to the full measure of covenantal responsibility and, at the same time, withdraw from major global issues that represent current extensions of the Noahide requirements? If Jewish law theoretically extends to the Noahide laws against murder and for just courts of law, does covenant responsibility permit Jews, often for the best strategic reasons, to separate themselves from issues impinging on those laws?

It is not suggested that the entire Jewish People has adopted this position. When vast numbers of Israelis filled *pushkes* for the relief of boat people, brought some of those refugees to Israel, and sent medical teams to Cambodia, they were acting in response to the *brit*. They were also responding, covenantally, to the ethically and politically prescient aggadah about the man boring a hole in his end of the boat. Yet, large numbers of Jews, in the name of their own construction of the *brit*, pursue a course devoted to Jews alone. Conversely, for members of the Covenant People to seek to disappear out of exalted universalist considerations would be a violation of a cardinal covenant principle which affirms the redemption and restoration of Israel. But it is also a violation of the covenant to exclude the Bnai Noah from Jewish concerns for this world as well as the future world. The issues of global hunger, the maldistribution of the world's resources, the threat of nuclear annihilation, the struggle by despairing people for liberation, should challenge Jews. Considerations of covenant morality should weigh more heavily than do political tactics alone which sometimes betray both the People's self-interest and its vocation. The growing peril of the return of the Flood requires that our millennial sensitivity to this kind of danger be employed more forcefully than Jewish pronouncements have thus far reflected. The Flood can come by fire, says our tradition. It can also come by the downfall of Western Civilization. Israel has spoken prophetically to civilizations in peril of life and soul. Out of its millennial literature, Israel can address itself authentically to the social and economic issues of our time. It is not enough that this be confined to the State of Israel, as some like Ha-Rav Kuk and Shimon Federbush have magnificently done. If there ever was a time for Judaism to speak globally in the canonized words of Judaism, it is now, especially when the proponents of Liberation Theology lean so heavily on the Torah and the Prophets of Israel for the support which their system requires.

As we read Liberation Theology, in whose spirit parts of the world are awakening, we must be impressed that Judaism has, in fact, been a

“light to the nations.” Liberation Theology, as developed by Christians, is primarily a systematic evocation of Jewish prophetic and legal positions on justice as well as the paradigm of the Exodus. This theology has been appropriated by an awakening mass of oppressed people, but many Jews have not known it. Should it not be the Jewish task to live and interpret what has always been the doctrine of Jewish liberation, to the Bnai Noah of our time? It should simultaneously be our task to reject the misapplication of Liberation Theology, which too often identifies the Jew as the adversary of liberation. Jews have not adequately conveyed to the West that, however some may individually conduct their struggle for survival, Jewish tradition is bound to no socio-economic systems of the Left or the Right, but that the only authentic Jewish system is rooted in the Torah and the Prophets.

2. Non-Jewish Residents of the Territories

Biblical treatment of the local inhabitants is mixed. Israel is instructed to love the stranger “as yourself.” This is a general principle whose specific application in certain instances is instructive. Concerning the Seven Nations, there are the admonitions: “You must doom them to destruction . . . give them no quarter,” “You shall destroy all the Peoples that the Lord your God delivers to you, showing them no pity.” Concerning a conquered city: “You shall put all its males to the sword. You may, however, take as your booty the women, the children, the livestock . . . and enjoy the use of the spoil.” “The Lord will be at war with Amalek throughout the ages.”⁴²

It is not intended to suggest even remotely that contemporary official Judaism or Israel is guided by these principles. The intent is to demonstrate how, in this context, as in so many others, recourse to Biblical authority, unmediated and uncontrolled by Rabbinic transmutation, can result in dangerous moral consequences. It is enough to cite one “authority” who invoked Deut. 7:16, “You shall show them no pity,” or others who have raised the intriguing possibility that the Arabs of the West Bank might be Amalekites. Jews cannot succumb to Biblical fundamentalism which could subvert millenia of Rabbinic moral metamorphosis, any more than we can succumb to Biblical territorialism by which a zealous chaplain in the IDF overwrote Beirut on a map as Israel’s ancient B’erot.

Concerning the stranger living in the midst of Israel, Maimonides says that the resident stranger is to be treated as a Jew is to be treated. This includes even idolaters.

We should treat resident aliens with the consideration and kindness due to a Jew, for we are bidden to sustain them . . . Even with respect to heathens, the Rabbis bid us visit their sick, bury their dead along with the dead of

42. Deuteronomy 7:1ff; 7:16; 20:16, 17; Ex. 17:15.

Israel, and maintain their poor with the poor of Israel, for the sake of peace.⁴³

Referring to Deuteronomy 23:16ff, the rules are applied as follows: If even a slave is to be given sanctuary and equal treatment and is not to be extradited when he finds shelter in Israel, how much more does this apply to any gentile who wishes to reside in the Land of Israel with the understanding that he will accept the laws of Noah. However, this does not apply ever since the Jubilee ceased in Israel.⁴⁴ Nevertheless, in the context of our concerns, the principle is of paramount importance. In addition, we are admonished that even when the Jubilee is not in effect, Jews must, nevertheless, deal kindly with the *ger toshav* at all times. This is reaffirmed in *Sotah* 37 which states that even members of the Biblical Seven Nations who accept the laws of Noah are to be treated kindly (“If they repent, they are to be welcome”).

Concerning Amalek, whom some extremists contemporaneously identify with Arabs on the West Bank, we know the Rabbinic dictum that “Sennacherib mixed up the entire world” and, therefore, Amalek really does not exist. In a remarkable interpretation, Naftali Zvi Judah Berlin comments that Exodus 17:15, declaring that God wages a war against Amalek, refers to everything for which it stood — war, violence, immorality, idolatry. Thus, God is not continuing a violent conflict with Amalek, since it does not exist, but, although it has perished, its evil ideology persists and it is against this that God carries on His conflict.

There is, of course, the passage in *Sefer Hamizvot* of Maimonides in which he makes the startling statement that there are still Amalekites in the world and that they must be destroyed. This, however, is not reaffirmed in his later writings. As for those who want to make a case of this today, Aaron Soloveitchik says, “Any other opinion is grounded in ignorance.” Obviously, there are also rigorous positions, such as Rashi’s comments on Deut. 21:11 — “They shall be tribute to you.” On one hand, according to the Sifrei, even members of the seven nations may be kept alive if they surrender, but, on the other hand, their surrender may not be accepted unless they submit to taxation and servitude. Yet, it is the task of religious Judaism to offset such positions with more compassionate but, for many, no less authentic stands by the same tradition.

3. The Limits of Ethnicity

Does the *brit* allow Jews to be ethnic alone? Clearly not. The Jewish People has undergone rescue after rescue, but never has the passage through the Sea of Reeds failed to bring it to Sinai. The *brit* demands both the outstretched rescuing arm and God’s commanding voice. It has been difficult for even well-disposed non-Jews to understand Nation and Land

43. *Hilkhot Melakhim*, 10:12.

44. *Erakhin* 29a.

as components of a covenant. But, in restoring them, it must be stressed that, *alone*, nationalism betrays the *brit*. This was not God's intent, as the Torah perceived it. It is possible, and for some desirable, to separate the ethnic from the spiritual-moral once and for all. It makes sense for many to create a nation "like all the nations," unencumbered by the moral restraints and the expectations which no other nation must bear. Why should Jews alone be possessed by a super-ego and live tormented lives as the super-ego of the world? But if that is the course that Jews choose to take, it becomes difficult to designate ourselves simultaneously as "like all the nations" and "a holy People." We must then abrogate the *brit* as we have done, in fact, in the past. Some have been prepared to do so, but they are only now beginning to face the consequences of such a choice in a raw nationalism which, on a global scale, certainly among older nationalisms, is becoming repugnant and discredited. We can also choose to shatter the synthesis of Jewish religion and nationalism, allowing each to pursue its own way (as in early Reform and anti-Zionist Orthodoxy on one hand, and early political Zionism on the other), with religion alone clinging to the *brit*. This dichotomy is alien to Jewish thought, absurd, and dishonest. It would be deceptive for Jews to claim the *brit* in our own religious lives and to disavow it in our national existence. This is only sacralized nationalism. Even more, it is a betrayal of the *brit* which is operational only when *umah* (nation) and *emunah* (faith) are joined in some significant manner.

I am not proposing an endowment of the State with the coercive power of religion. I prefer the proposal by Federbush that the halakhah and religious values, free of political power, permeate the nation and teach it how to apply, in law and practice, the far-ranging social implications of the legal corpus of Jewish tradition. The task of an authentic fusion of the national and the religious is exceedingly arduous. Taking precedence over that issue is the challenge — do Jews want to strive for a covenant existence or would we rather be free of it? Jews have already made one choice: we wish to be neither a de-ethnicized cult with an abstract belief in ethical monotheism, nor an eternally exiled community of faith which periodically undergoes *kiddush ha-Shem*. Martyrdom, too, is an incomplete *brit* experience. Can Jews now, as an act of collective will, choose to restore the *brit* to its religio-national fullness? This issue is joined to at least two elements of the paradigmatic *brit*.

1. *Brit Yesurin*

Jews are bound to the sons of Noah by the ties of the Shoah which has added another Noahide law, against genocide. Jews have been its victims. Jews must be its warning witnesses to the world that, as long as humanity endures, no people is immune to the eruption of the demonic. As Judaism held the sons of Noah accountable for the seven laws, now that these laws have become (imperfectly) internalized by man, Jews hold them

accountable by virtue of Israel's ordeal, by its stubborn presence, by its refusal to be silent, for this newest law, until it, too, becomes internalized. I am not among those who reject what they call the over-exploitation of the Shoah. True, it has been vulgarized by some. But its essential demand that it be confronted continually by Jew and Christian is valid. It is the *Shoah*, the unmitigated disaster. It is not the "Holocaust" which could come to suggest vicarious atonement (an un-Jewish concept) by Jews for collective Christian sin. The "Holocaust" must be exorcised, but the *Shoah* must enter Jewish liturgy as a *zekher*, on a level with *maasei breshit* (creation) and *yeziat mizrayim* (the Exodus).

The original *brit yesurin* describes the suffering consequent to the People's violation of the covenant. In the post-*Shoah* world, it is heinous to perpetuate such a concept. What guilt by little children was so appalling as to incur such an affliction? But we can invert the concept and declare that, instead of a *brit* of terror, Jews embrace a *brit* that has survived terror; that, for all the agony endured by this People Israel, it has not only endured but has chosen to endure. Israel has remained a *brit* community despite all of the afflictions imposed upon it. We are told, "In reference to *brit yesurin*, affliction cleanses one's sins."⁴⁵ A Jew today may transmute this to suggest a prayer that the *brit* of terror might cleanse the Jewish People of its tryst with the lure of Jewish self-annihilation. Isaiah evoked Israel's torment when he said, "When you pass through water I will be with you . . . When you go through fire you shall not be consumed."

Yet, the nuance in this day's evocation of that passage is not God's protective care but the People's will to remain Jewish and to create a new world for its posterity despite the fact that the fire consumed its millions. The *brit* of suffering is reminiscent of the Jew in *Shevet Yehudah* who cries out, "Despite what You, God, have done to me, the death of my wife and my two sons, a Jew I am and a Jew I shall remain," and having said that, he goes on in search of a Jewish settlement.⁴⁶

2. *The Brit of Ahavat Yisrael*

Tragically, the incident in *Shevet Yehudah* does not end with the Jew's settling among his people. Ibn Verga concludes, "and when he set forth, no one paid attention to his suffering, because everyone was steeped in his own trouble."⁴⁷ Thus, the *brit* was flawed. Jeremiah's sense of pain over the injustice of Jew to Jew and, hence, the breach of the *brit*, applies to this day. The paradox of a people united in confrontation with the world, but torn by internal conflict, challenges Jews ever more ominously. Voices, hands and weapons are lifted by Jews against Jews. The politics of contempt and hatred is the obverse side of the struggle over

45. *Berakhot* 20.

46. Shlomoh Ibn Virga, *Shevet Yehudah* (Jerusalem: Schocken, 1947), p. 125.

47. *Ibid.*

Judea and Samaria. These are not only geographical areas; they represent the ancient rift that once tore the Jewish People irrevocably apart. Is there a malignant subterranean fault in the Jewish people, erupting periodically in dark outbursts of viciousness? Can Jews overcome outer menace if internal frenzy seizes us? This is the most intractable issue of all. Too often in the past, the seizures of hatred were brought under control only by the intervention of foreign powers. In mid-nineteenth century Jerusalem, embattled Ashkenazim and Sephardim were pacified by French and British Consuls. Where are the moral interveners from within today? Where are the keepers of Jeremiah's *brit* who admonish and warn against the abuse of Jews by Jews, and the awful consequences which could shatter both *brit* and People, bearers of the *brit am*?

Poem For My Ancestors

SARAH SINGER

How do I address you,
And in what vernacular?
Whom do I bless or curse
For this unwitting trait or that,
For the shape and color of eyes
Affirmed by mirrors,
Or tricks of bone
I memorized at birth?

You, Yankel, who learned
pogroms
In your Russian shtetl
Along with prayer,
And sat cross-legged
Upon a table
Sewing your life away
A hundred years ago?
Can you hear my thoughts
Laid seam to seam?

Or you, the widow Chaya
Who kept a store,

And counted out your woes
Like beans or lentils?
How can you know
Your sorrows disconcert
My metaphors?

I disavow no one.
Even you whose names
Have been forgotten,
Yet invent the climate of my days.

And you, Raizel,
Great-great-grandmother
Who baked words
You could not write
Into loaves of braided bread —
I would tell you this:
I will write them for you,
Knead them like yeasty dough
Into leavened poems
For the Sabbath.

SARAH SINGER has received numerous poetry prizes and has been published widely.

Judaism and the Practice of Stewardship

DAVID EHRENFELD and PHILIP J. BENTLEY

DURING THE PAST MILLENIUM OR MORE OF Jewish history, the Jews have become, partly by choice but mostly by force, an increasingly urban people. Hedged in by laws restricting land ownership, occupations, and dwelling places, especially in Christian Europe, they often found themselves living in crowded ghettos out of touch with the natural world.¹ The Hasidic Jews, who more than any other group cling to this European Jewish ghetto culture of centuries past, are like the Amish in many respects, yet a people more cut off from nature and the natural world cannot be imagined. When one thinks of Jews one thinks of merchants, financiers, shopkeepers, peddlers, professional people, artists, intellectuals, and craftsmen; one does not usually think of farmers, fishermen, or naturalists although, of course, there have been exceptions.

Thus it is not surprising that most people, including most Jews, are unaware that Judaism was one of the first great environmental religions — that it speaks of humanity, land, and nature not in vague generalities but in great depth and detail and with a wisdom that seems to grow more appropriate and profound with each passing decade.

One volume of the *Mishnah* is entitled *Seeds*. It describes in exacting detail the Jewish legal strictures about every phase of agricultural practice, documenting the originally intimate relationship between Jews and the land. Many of the early Jewish sages were farmers — indeed, by the seventh century, during the first Islamic conquests, it was only their needed agricultural skills that saved some Jews in Arab lands from being put to the sword.²

Among the religions that speak profoundly of humanity's need to care for nature, for the rest of God's creation, Judaism stands at one end of a philosophical spectrum — the human-centered end — in which the human role in the world is that of careful steward. At the other end of the spectrum are religions such as Jainism, which emphasize humanity's role

1. Even the ownership of family pets — dogs and cats — was, until recently, uncommon among both Ashkenazic and Sephardic households.

2. Norman A. Stillman, *The Jews of Arab Lands: A History and Source Book* (Philadelphia: Jewish Publication Society, 1979).

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in nature as one of absolute non-violence and non-interference. A Jain monk abstains from eating meat, fasts frequently to avoid hurting plants, walks barefooted so as not to injure the small creatures of the earth, and may even breathe through a mask of seven thickness of gauze to avoid inhaling and killing any of the tiny organisms of the air.³

Judaism is not at all like this. Jews commonly believe that every live thing on earth must have some human reference and use, even if it is only to remind us of our place in the scheme of things. And Jains believe that every live thing on earth is, or has a right to be, free of human reference.

Both of these attitudes towards nature have great validity and appeal, yet they are extreme positions. On the one hand, it seems to most of us that it is neither possible nor desirable for billions of humans to live in the world without changing it substantially; therefore, wise stewardship is necessary. On the other hand, stewardship is easily corrupted to the belief that we are lords, not caretakers, and that we are capable of managing and resolving all of the technological and social problems that we may have produced in our complex society.⁴

We cannot speak to the objections to Jainist doctrine. It is clear, however, that restraint, non-interference, and humility were an integral part of the original Jewish concept of stewardship, regardless of corruptions that may have taken place subsequently, and that these restraining virtues may yet prevail. This idea is a quiet corollary of the powerful theme running through Jewish teaching that human beings are not to be deified, that we are not true lords of anything except our free will. In the talmudic tractate *Sanhedrin* we find the statement:

Our masters taught:

Man was created on the eve of the Sabbath — and for what reason?

So that in case his heart grew proud, one might say to him:

Even the gnat was in creation before you were there.⁵

Nevertheless, it cannot be denied that while it is almost impossible to pervert the Jain philosophy in a way that leads to widespread environmental damage, the same thing cannot be said of the Jewish, or, for that matter Christian, ideas of a human-centered world. As Jews and Christians have found, to their sorrow, the practice of stewardship, under the intoxicating influence of the power that comes with science and technology, is easily twisted and distorted so that stewardship becomes subjugation. When this occurs, as it does all around us, the vision of a power higher than humanity, which gave the original sanction and limit to the idea of stewardship, is itself washed away in a flood of collective egomania.

One effect of this humanistic arrogance has been to turn some envi-

3. Satish Kumar, *No Destination* (Wales: The Black Pig Press, 1977).

4. David Ehrenfeld, *The Arrogance of Humanism* (New York: Oxford University Press, 1981).

5. Nahum Glatzer, ed., *A Jewish Reader* (New York: Schocken Books, 1961).

ronmentalists against Judaism and Christianity, the religions of stewardship, as if it were the notion of stewardship rather than its distortion that has caused all of the trouble. Such criticisms are usually supported by the quotation of *Genesis* 1:26, 28, the familiar injunction to have dominion over the earth and to subdue it, about which we will have more to say.

Christian thought and Christian interpretation of Jewish and Christian Scripture is so pervasive in Western society that even most of the Jews who think about these matters do not realize that the problem of the chasm between humanity and the rest of nature exists more for Christians than for Jews. Christianity has a stronger emphasis on the Other World than on this world, and classical thought has a much stronger hold on Christianity than on Judaism.⁶ In the classical view, nature is an entity unto itself and humanity is something apart from it. In Judaism we consider this world of great importance. As for nature, there isn't even a Hebrew word for it, at least not in rabbinic Hebrew.

Historical Context

Before examining the practice of stewardship in Judaism, we must pause a moment for an important caution. It would be a mistake to pretend that the ancient rabbinic sages had any inkling of the extent, or even the possibility, of the kind of global pollution and massive environmental destruction that we are witnessing today. To the ancients the world was a huge place. No one had seen with his own eyes the physical extent of it, nor could he have imagined a worldwide crisis concerning such basic resources as water or air, particularly a crisis caused by man. If we could not control the elements, we could not destroy them either.

So one cannot ask "what does traditional Judaism say about our environmental crisis?" It doesn't say anything about it. That doesn't mean, however, that Judaism offers no guidance on the question of humanity's relationship to the environment. We simply have to search the literature properly, phrasing our questions to suit the context of the times, and interpreting the rabbinic "answers" in a restrained and literal way, in order not to interject our own ideas.

When this caution is observed, several critically important ecological ideas can be seen occurring in the Jewish tradition, even apart from the ideas of stewardship and the Lord's dominion.

First is the idea that *if man does evil, nature reacts*. This idea, which was brilliantly explored by Faulkner in *Go Down Moses*, has yet to be grasped by either the majority of people in the industrial world or their leaders, but it is often encountered in the older Jewish literature, including the Torah, itself, e.g. Deuteronomy 11:13-17.

6. Trude Weiss-Rosmarin, *Judaism and Christianity: The Differences* (New York: Jonathan David, 1943).

A second ecological concept that is part of the tradition is that *there is a definite order to the world ordained by God as part of creation. Nothing was created for no purpose or in vain.* In our century, the best secular statement of this ancient idea was made by Aldo Leopold and it has found its way into nearly every conservationist's philosophy — although, frankly, it is easier to defend from a theological than an ecological standpoint.⁷

Third is that most general of ecological principles: *you don't get something for nothing*. This is entrenched in the early Jewish writings, and finds one of its best expressions in the accepted rabbinic belief, based on Scripture and the oral tradition, that Adam was not allowed to eat in the garden of Eden until he had first worked for his food by tilling and keeping the garden.⁸

And fourth, embedded deep within Judaism is the profound ecological idea of *human dependence upon nature*; our work alone does not suffice to keep us alive. In fact, as Richard Hirsch has pointed out, the idea is taken far beyond this. He writes that "our sages formulated a philosophy which could be called 'survival of the sustainers,' succinctly expressed in the [talmudic] saying 'Not only does man sustain man, but all nature does so. The stars and the planets, and even the angels sustain each other.'"⁹

Dominion, Creation, and the Hebrew Language.

The verses of Genesis 1:26, 28, in which man is given "dominion" over all the animals of the earth, are mistakenly believed by many environmentalists to summarize and represent the entirety of the Jewish and Christian teachings on the subject. We will leave the defense of the Christian tradition to others like Wendell Berry; in the case of the Jewish attitude towards the environment, the attack is easily disposed of, regardless of whether one's biblical interpretation is liberal or strictly orthodox, and without doing damage to the historical context in which the biblical verses first appeared.¹⁰

7. Aldo Leopold, *A Sand County Almanac* (New York: Oxford University Press, 1966). See, especially, the essay on "A Land Ethic."

8. Compare this with E.F. Schumacher's similar statements about the necessity and divinity of work, in his essay on "Buddhist Economics" in *Small is Beautiful* (New York: Harper & Row, 1973).

9. Richard Hirsch, "There Shall be no Poor," in *Judaism and Human Rights*, M. Konvitz, ed. (New York: Norton, 1972).

10. Wendell Berry, in his brilliant essay, "The Gift of Good Land" (*Sierra Club Bulletin*, Nov.-Dec., 1979, actually defends both Jewish and Christian traditions against the charge of anti-environmentalism. One of the first and most comprehensive defenses of the Jewish position was by Robert Gordis, in an essay entitled "Judaism and the Spoliation of Nature" (*Congress Bi-weekly*, 9-12, April 2, 1971). A more recent evaluation of the charge of anti-environmentalism has been given by Nigel Pollard ("The Israelites and Their Environment," *The Ecologist* 14(3), 125-33, 1984), who has assembled many sources and, unlike Berry and Gordis, views the subject from an entirely secular perspective — at least as far as Judaism is concerned. (See also the essay by Lamm, referenced in footnote 21.)

There are two answers to the “dominion” criticism, each of which would be sufficient to refute the charge. The first is to point out the superficial nature of the interpretation and its lack of content. There is no evidence, that we are aware of, that these verses of *Genesis* were ever interpreted by the rabbis as a license for environmental exploitation. Indeed, such an interpretation runs contrary to their teachings and to the whole spirit of the oral law. As Berry has said, to put these verses in their proper context, one need go no farther than *Genesis* 2:15, Adam’s instructions to “dress” and “keep” the garden, which have always been assumed to have a bearing on how the dominion was to be exercised. In other words, although the “dominion” phrases of *Genesis* could have been interpreted in the harsh, exploitative way that some critics suggest, they were never, in fact, interpreted that way within the rabbinic tradition.

A second answer to the dominion criticism is based on the inadequacy of the English translations of the original Hebrew of the Jewish Scriptures. By chance, an excellent example of this inadequacy concerns the word “dominion” itself. A quarter of a century before William the Conqueror invaded England, Rashi had this to say about the “dominion” of *Genesis* 1:26: “The Hebrew [*yirdu*] connotes both ‘dominion’ (derived from *radah*) and ‘descent’ (derived from *yarad*): when man is worthy, he has dominion over the animal kingdom; when he is not, he descends below their level and the animals rule over him.”¹¹ Here is a whole dimension of meaning which cannot be conveyed by an English translation.

In the prevailing English translation of the Bible, humankind and its world come in “the beginning,” an interpretation that lends itself to arrogance and ego-centeredness. In the original, however, the sense of the Hebrew, from the first word of *Genesis*, is that we and our universe were not here in the beginning, if there was a beginning, a thought conducive to humility and God-centeredness. This is an oriental vision of tiny humanity in a vast universe, like the Chinese paintings of little human figures set against a background of gigantic waves and mountains, which environmentalists are fond of citing.

More important, perhaps, is the accepted Jewish implication of the word *bereshit*, that creation is an ongoing process; it is not finished. In the morning religious service we find the words, “Daily He renews the work of creation.” Humanity participates in some aspects of this ongoing act of creation, but only when we act in the proper spirit and appreciate the continuing role of the Creator in His creation. This is the background against which we must view the Jewish idea of stewardship and humanity’s relationship to the rest of nature.

11. A. Cohen, ed., *The Soncino Chumash: The Five Books of Moses With Haphtaroth* (London: Soncino Press, 1947), p. 6.

What is the traditional Jewish notion of stewardship really like? If we search in the Hebrew Bible we find a number of familiar verses that stress God as creator and owner, and humankind as humble caretaker or steward of the earth: "And. . . God. . . put him into the garden of Eden to till it and to keep it" (Genesis 2:15). "The land shall not be sold for ever: for the land is Mine; for you are strangers and sojourners with Me" (Leviticus 25:23). Many other biblical texts can be construed as being relevant, in a more or less direct way, to the idea of stewardship.¹²

Many modern Jews and Christians interpret these statements as a biblical mandate for stewardship. But how did the Jewish sages, who lived in a different world, treat them? If one looks at the rabbinic commentaries on Psalm 119:19 and I Chronicles 29:15, both of which repeat the idea of our being strangers and sojourners in God's world, we find no mention of the environment. The reference is to the transitory nature of man's life on earth and the necessity of living the good life and keeping the commandments. Moreover, the environmental connotations of Genesis 2:15 are not even alluded to by Rashi in his commentary.

Does this mean that environmental thought and the idea of stewardship are missing from the philosophy of the rabbis who first codified Jewish law and gave form to its tradition? No. Again, we must remember the historical context of the times in which they lived. Then, "the environment" was not viewed as set apart from humankind; there was nothing to comment on. Nor did humans have the power to take actions that would quickly lay waste large parts of the natural world.

We do not find teachings that say "man has a responsibility to the environment;" rather, we discover that the care of the natural world, which we do not own, was an implicit part of the rabbinic image of the good person. In this image, the idea of human accountability to a higher authority, the Owner, is always central.

An excellent illustration of this point is provided by a quotation from the writings of the great eleventh century Spanish rabbi, Jonah ibn Janah of Saragossa, the pioneering Hebrew philologist:

A man is held responsible for everything he receives in this world, and his children are responsible too. . . . The fact is nothing belongs to him, everything is the Lord's and whatever he received he received only on credit and the Lord will exact payment for it. This may be compared to a person who entered a city and found no one there. He walked into a house and there found a table set with all kinds of food and drink. So he began to eat and drink thinking, "I deserve all of this, all of it is mine, I shall do with it what I please." He didn't even notice that the owners were watching him from the side! He will yet have to pay for everything he ate and drank, for he is in a

12. Some commonly cited examples are: Deuteronomy 10:14, Psalms 24:1, 2, Job 39:26, 27 and 40:15, 19, as well as Isaiah 47:10.

spot from which he will not be able to escape.¹³

This quotation deals with humanity's responsibility to God, not with our relationships to nature. Yet it includes the first principle of stewardship: the steward is not owner of the property in his care, and will, ultimately, be held accountable for its condition.¹⁴

Of course, not all early Jewish references to stewardship of the natural world are indirect or obscure. The following *aggadah* is from *Ecclesiastes Rabbah*, which was redacted in approximately the eighth century:

In the hour when the Holy One Blessed Be He created the first man,
He took him and let him pass before all of the trees of the garden of Eden,
And said to him:
See My works, how fine and excellent they are!
Now all that I am going to create for you I have already created.
Think about this and do not corrupt and desolate My world;
For if you corrupt it, there will be no one to set it right after you.¹⁵

Bal Tashhit and Za'ar Baalei Hayyim

Beyond the general principles of ultimate ownership and accountability, the exercise of stewardship has never been left to the imagination of the stewards. There are, in Judaism, a number of specific rules — together constituting a kind of “Steward’s Manual” — setting forth humanity’s particular responsibilities for its behavior towards natural resources, animals, and other parts of nature. First among these rules is the commandment of *bal tashhit*.

In Deuteronomy 20:19 we read: “When you besiege a city a long time, in making war against it to take it, you shall not destroy the trees thereof by wielding an axe against them; you may eat of them, but you shall not cut them down; for is the tree of the field man, that it should be besieged of you?”

From this source is derived the notion of *bal tashhit* (do not destroy), an ancient and sweeping series of Jewish environmental regulations that embrace not only the limited case in question but have been rabbinically extended to a great range of transgressions including the cutting off of water supplies to trees, the over-grazing of the countryside, the unjustified killing of animals or feeding them harmful foods, the hunting of ani-

13. J. Goldin, ed. and trans., *The Living Talmud* (New York: Mentor, 1957).

14. The antiquity of this theme is demonstrated by its appearance in *Avot*. 3:16 (attributed to Rabbi Akiva) a thousand years before Janah’s time. That an association between the idea of stewardship and that of accountability to God is not unreasonable, is borne out, for example, by the talmudic midrash that Moses and David were not fit to be leaders of Israel until they, themselves, had been shepherds (*Talmud Yerushalmi, Kilayim* 9:3, 32a; *Bava Mezia* 85a).

15. H. Freedman, and M. Simon, eds. and trans., *Midrash Rabbah*, Vol. VIII: *Ruth, Ecclesiastes* (London: Soncino Press, 1939).

mals for sport, species extinction and the destruction of cultivated plant varieties, pollution of air and water, over-consumption of anything, and the waste of mineral and other resources.¹⁶

Samson Raphael Hirsch eloquently summarized the meaning of *bal tashhit* for a religious Jew:

“Do not destroy anything!” is the first and most general call of God, which comes to you, man, when you realize yourself as master of the earth. . . . God’s call proclaims to you. . . . “If you destroy, if you ruin — at that moment you are not a man, you are an animal, and have no right to the things around you. I lent them to you for wise use only; never forget that I lent them to you. As soon as you use them unwisely, be it the greatest or the smallest, you commit treachery against My world, you commit murder and robbery against My property, you sin against Me!” This is what God calls unto you, and with this call does He represent the greatest and smallest against you and grants the smallest, as also the greatest a right against your presumptuousness.¹⁷

According to Hirsch, even the practice of hoarding property and doing nothing with it, rather than using it wisely and maintaining it, is condemned under *bal tashhit*. This is strikingly similar to contemporary arguments against many current agricultural practices. It is also in accord with the recent ecological awareness that when people abandon or neglect land that has previously been farmed with care and skill, the number of species of native wild plants and animals suffers a sharp decline.¹⁸

Inhumane conduct towards animals is also powerfully enjoined in Jewish law. The prohibition against inflicting *za’ar baalei hayyim* (pain of living things) has multiple biblical sources, including Deuteronomy 22:6, which forbids the killing of a bird with her young. According to Jewish tradition, the prohibition against one form of inhumane conduct towards animals is one of the seven commandments given to the sons of Noah and, therefore, is binding on all humanity, not just upon Jews. Some kinds of work are even permitted to Jews on the Sabbath, if the purpose is to relieve the suffering of an animal. Kindness to animals is one of the few virtues that the Jewish tradition specifically associates with the promise of heavenly reward.

The ultimate extension of *za’ar baalei hayyim* is to abstain from killing animals at all; the result is vegetarianism, a practice that has been institutionalized in Jainism, Hinduism, and other eastern religions.

16. Eric Freudenstein, “Ecology and the Jewish Tradition,” in *Judaism and Human Rights*, pp. 265-74; Jonathan Helfand, “Ecology and the Jewish Tradition: a Postscript,” *JUDAISM* XX, 3 (1971): 330-35.

17. Samson Raphael Hirsch, *Horeb: A Philosophy of Jewish Laws and Observances*, I. Grunfeld, trans. (New York: Soncino Press, 1981), pp. 279-80.

18. For example, see the discussion of bird diversity at a farmed oasis and at a nearby ‘protected’ oasis in the Sonoran Desert, in Gary Nabhan’s book, *The Desert Smells Like Rain* (San Francisco: North Point Press, 1982), pp. 87-97.

Vegetarianism, although not mandated by Jewish law, is a practice that has long appealed to Jews; the sages believed (based in part on Genesis 1:29) that humans were vegetarian until after the Flood, when the eating of meat was permitted. The Jewish dietary laws are much simpler for vegetarians to observe than for those who eat meat, and some authorities see this as deliberately punitive, with the intention of reducing the number of animals killed for food. Jewish law mandates only humane slaughter of healthy animals for food, and there are those who maintain that the consumption of animals that have been “factory” raised under inhumane conditions violates the spirit of *kashrut* as well as the letter of other *mizvot*. Jewish vegetarianism is a small but strong movement with its own magazine.¹⁹ Its best-known modern advocate was the late Chief Rabbi of Palestine, Abraham Isaac Kook.

Sabbath and Stewardship

When stewardship is corrupted by power in the absence of restraint, it becomes ecological tyranny and exploitation. This is the central problem of stewardship, a problem that has always existed but has become critical only with the rise of modern technology and its side effects, including over-population. With technology, humanity has achieved a power and a presence that is utterly subversive of the practice of stewardship. Modern theorists have despaired of finding non-coercive ways of resolving this tragic dilemma²⁰, and many environmentalists have condemned stewardship, itself, as an inherently unworkable concept.

Nevertheless, within Judaism there still exists a mechanism — the original mechanism — for reconciling stewardship's absolute need for human restraint and forbearance with the mundane exercise of power. *Bal tashhit* and *za'ar baalei hayyim* are not enough. For Jews, it is the Sabbath and the idea of the Sabbath that introduces the necessary restraint into stewardship. It is also the Sabbath alone that can reconcile the Jewish attitude towards nature with the attitude of secular environmentalism, of holistic ecology, or of the non-anthropocentric religions such as Jainism.

An hour past sundown on Saturday, at the conclusion of each Sabbath, we pronounce a blessing which says in part: “Blessed are You, O Lord, who makes a distinction between holy and ordinary, between the seventh day and the six working days.” In this blessing there is no implied criticism of either the ordinary or the six working days. The Sabbath needs the six working days, just as they, in turn, need the Sabbath. Stewardship is one function of the six working days and it shares this complementary relationship with the Sabbath. Just as the recollection of wise stewardship enhances the Sabbath and makes it possible, so is steward-

19. *Jewish Vegetarian*, quarterly publication of the Jewish Vegetarian Society, London. See also, Schwartz, R., *Judaism and Vegetarianism* (Smithtown, N. Y.: Exposition Press, 1982).

20. Garrett Hardin, “The Tragedy of the Commons,” *Science* 162 (1968): 1234-8.

ship incomplete and imperfect without the complementary recollection and restraining influence of the Sabbath *during the rest of the week*.

On the Sabbath, the traditionally observant Jew does more than rest, pray, and refrain from ordinary work. There are at least three other elements of Sabbath observance that are relevant to stewardship: we create nothing, we destroy nothing, and we enjoy the bounty of the earth. In this way the Sabbath becomes a celebration of our tenancy and stewardship in the world.

Nothing is created, and this reminds us of God's supremacy as Creator and our own comparative inadequacy.²¹ Nothing is destroyed, and this reminds us that the creations of this world are not ours to ruin. We enjoy the bounty of the earth, and this reminds us that although our work, if properly done, will uncover for us far more of God's bounty than we would otherwise have enjoyed, nevertheless God, and not human invention, is still the ultimate source of that bounty.

Two tangible environmental applications of the idea of the Sabbath are the Sabbatical and Jubilee years, as described in Leviticus 25.²² Every Sabbatical or seventh year the land of Israel is to lie fallow; every fiftieth or Jubilee year not only was the land left untilled but it reverted to its original ownership, thus (when observed) preventing the kind of concentration of large blocks of land in a few hands that now characterizes the American agricultural system and which is the cause of many of our most intractable environmental difficulties.

That the Sabbatical and, presumably, Jubilee years were actually observed in ancient Israel is shown by the fact that Alexander the Great and Julius Caesar both remitted tribute to the Jews every seventh year, and that Tacitus cites the Sabbatical year practice as evidence of the inherent laziness of the Jews.²³ Even today, the Sabbatical year receives some form of recognition from religious Jews in Israel.

But there is yet a deeper environmental significance to the Jewish Sabbath. Abraham Joshua Heschel wrote:

Technical civilization is man's conquest of space. It is a triumph frequently achieved by sacrificing an essential ingredient of existence, namely, time. In technical civilization we expend time to gain space. To enhance our power in the world of space is our main objective. . . . The power we attain in the world of space terminates abruptly at the borderline of time. But time is the heart of existence. . . . The more we think the more we realize: we cannot conquer time through space. We can only master time in time. . . . Our

21. For the ecological significance of the difference between human and Divine creativity see: "Ecology in Jewish Law and theology," in *Faith and Doubt*, by N. Lamm (New York: KTAV, 1971). Lamm also discusses the issue of *Genesis* 1:28, as well as the subject of Hasidic immanentism.

22. Gerald J. Blidstein, "Man and Nature in the Sabbatical Year," *Tradition* IX, 4 (1966): 48-55.

23. Joseph H. Hertz, ed., *The Pentateuch and Haftorahs*, 2nd ed. (London: Soncino Press, 1978), p. 531.

intention here is not to deprecate the world of space. To disparage space and the blessing of things of space, is to disparage the works of creation, the works which God beheld and saw "it was good". . . . Time and space are interrelated. To overlook either of them is to be partially blind.²⁴

To Heschel, control of space without mastery of time, which is eternal, is a meaningless achievement. It is the Sabbath that gives access to the realm of time. Or, as he put it, the Sabbath "tries to teach us that man stands not only in relation to nature but in a relation also to the creator of nature." In our work with nature and its laws we deal largely with space and things. Yet, as many ecologists perceive, it is always the element of time that eludes the engineers, the agribusinessmen, the planners, and the remodellers of the earth. A desert ecosystem that has been destroyed in seconds by the heedless passage of a few motorized vehicles cannot be restored by us, and will take more than 100 years to restore itself.

Without the influence of the Sabbath, stewardship in practice is corruptible and unstable. For Jews, it is the awareness of the Sabbath during the working days that can bring the realm of time and its accompanying sense of restraint and limit to stewardship. It is the Sabbath that defines the relationship between steward and Ruler. It is the Sabbath, ultimately, that completes and confirms the environmental wisdom of Judaism.

24. Abraham Joshua Heschel, *The Sabbath: Its Meaning for Modern Man* (New York: Farrar, Straus and Giroux, 1951).

Some Laws of Jewish Liturgical Development

JAKOB J. PETUCHOWSKI

THE TRADITIONAL JEWISH LITURGY, IN its diverse manifestations, is an imposing artistic structure. But, unlike a painting or a symphony, it is not the work of one artist or even the product of one period. It is more like a medieval cathedral, in the construction of which many generations had a share, and in the ultimate completion of which (if, indeed, it ever was completed) the traces of diverse tastes and styles may be detected. Moreover, the traditional Jewish Liturgy is not only imposing; it can also be overwhelming — particularly to those who approach it without previous knowledge of its “architectural layout.”

Just as the full appreciation of a medieval cathedral is possible only after one has acquired a basic knowledge of architectural styles and ecclesiastical art, so is the appreciation of Jewish Liturgy dependent upon some familiarity with the laws of Jewish liturgical development. The following lines are an attempt to formulate some of those laws, as they suggest themselves to someone who has devoted more than three decades to the study of that Liturgy.

By “laws” within this context we mean the inner dynamics of Jewish liturgical development, as they have been operative for about the last two millennia. In other words, those laws are meant to be *descriptive*. Whether they should also be *normative*, i.e., whether they should govern further liturgical developments, *consciously* undertaken by Jews, that is a question which lies beyond the scope of this particular investigation. In any case, the answer to that question will depend upon one’s religious orientation, in general, and one’s liturgical tastes, in particular.

(1) “*One generation’s spontaneity becomes another generation’s routine.*” The ideal of Jewish prayer is the free outpouring of the human heart before God. The exigencies of communal worship demand fixed times of prayer and the crystallization of common prayer formulae. The history of Jewish Liturgy is a history of the attempts to satisfy those two — apparently contradictory — claims.

As that history unfolds, we notice that, with a high degree of inevitability, the fixed prayer routine always gains the upper hand, at

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least in the sense that prayers, which were meant to *supplement* the official prayer routine with the free outpouring of an individual human heart, end up as components of a later generation's fixed prayer routine. Take, for example, the prayer *par excellence* of the classical Rabbinic period, i.e., the Prayer of the Eighteen Benedictions. It was, according to a talmudic report, "fixed" around the year 100 C.E. by Simeon Hapaqoli under the auspices of Rabban Gamaliel II in Yavneh.¹ But what was "fixed" was the number Eighteen, the ideas to be expressed in the various benedictions, and, to some extent, the order in which those benedictions were to be recited. The *wording* of the individual benedictions was *not* fixed. When, therefore, Rabbi Simeon taught: "Do not make your Prayer a matter of fixed routine,"² and when later Rabbis interpreted Rabbi Simeon's statement to mean: "One must innovate something in the Prayer every day,"³ neither Rabbi Simeon's original statement nor its interpretation by the later Rabbis constituted a challenge to Simeon Hapaqoli's efforts. For, as we have noted, Simeon Hapaqoli had received no instructions from Rabban Gamaliel II to "fix" the *wording* of the Prayer of the Eighteen Benedictions.

Later, the wording of the Prayer of the Eighteen Benedictions did crystallize, or, to be more accurate, at least two different versions of that prayer emerged — a Palestinian one, and a Babylonian one. The latter actually contained *nineteen* benedictions, and it is the one which forms the basis of the versions of that prayer which are found in the different traditional Rites still in use in the twentieth century. Once the wording of the Prayer of the Eighteen Benedictions crystallized, the individual worshipper was still afforded an opportunity for the free outpouring of the human heart before God *after* the recitation of the — now "traditional" — Eighteen (or Nineteen) Benedictions. Allowance was made in that part of the worship service for what is variously referred to as "Words," Entreaties for Mercy," and "Falling with one's Face to the Ground." For this, there were no "authorized" or "fixed" words.

The Talmud records some of the prayers which individual Rabbis would utter after the conclusion of the Prayer of the Eighteen Benedictions.⁴ Included among those private prayers is the prayer of Mar, the son of Rabina, which begins as follows:

My God, keep my tongue from evil,
and my lips from speaking guile.
To those who curse me let my soul be silent;
and may my soul be as dust to everyone. . . .⁵

In the first Jewish prayerbook, written by Rabh 'Amram Gaon in the

1. B. *Berakhoth* 28b.

2. *Mishnah Abhoth* 2:11.

3. B. *Berakhoth* 29b.

4. B. *Berakhoth* 16b-17a.

5. B. *Berakhoth* 17a.

ninth century C.E., that prayer is one of several options provided for recitation after the Prayer of the Eighteen Benedictions.⁶ In the tenth century, Rabh Sa'adya Gaon, in his prayerbook, simply indicates that, after the Prayer of the Eighteen Benedictions, "one says this petition"; and he offers an abbreviated version of the private prayer of Mar, the son of Rabina.⁷ That private prayer has remained an inseparable appendix to the Prayer of the Eighteen Benedictions ever since.

What, then, happened to the time originally set aside for the free outpouring of the human heart? It was simply postponed until *after* the prayer of Mar, the son of Rabina. At any rate, for a while. For here, too, what was once free and unstructured prayer crystallized into prayers of fixed wording, particularly lengthy on Mondays and Thursdays.

This is but one example out of many which could be given to illustrate the law: "One generation's spontaneity becomes another generation's routine."

(2) "*When the choice is between one or more versions of a prayer, the usual decision is to say them all.*" As a striking illustration of the operation of this law, we may adduce the discussion in b. *Berakhoth* 11b, where the question is raised about the benediction to be recited before Torah study.

Rabh Judah quotes Samuel to the effect that the benediction should be:

Praised are You, Lord our God, Sovereign of the Universe, who has sanctified us by Your commandments, and commanded us to occupy ourselves with the words of the Torah.

Rabbi Yohanan accepts that version as far as it goes, but he also suggests that the following words be added:

And make pleasant, O Lord our God, the words of Your Torah in our mouth and in the mouth of Your people, the House of Israel, so that we and our offspring and the offspring of Your people, the House of Israel, may all know Your name and study Your Torah. Praised are You, O Lord, who teaches Torah to His people Israel.

Rabh Hamnuna, however, suggests the following benediction:

Praised are You, Lord our God, Sovereign of the Universe, who has chosen us from all peoples and has given us His Torah. Praised are You, O Lord, Giver of the Torah.

Rabh Hamnuna then evaluates the version of the benediction which he has quoted as "the finest of the benedictions."

After that, one might expect Rabh Hamnuna to recommend "his" benediction as the standard one. But that is *not* what actually happened. For Rabh Hamnuna concluded with the following recommendation:

6. Cf. *Seder Rabh 'Amram Gaon*, ed. Daniel Goldschmidt (Jerusalem: Mossad Harav Kook, 1971), p. 28.

7. *Siddur Rabh Sa'adya Gaon*, ed., Davidson, Assaf, Joel (Jerusalem: Mekize Nirdamim, 1941), p. 19.

"Therefore let us say *all* of them!" The "therefore" is a *non sequitur*; and perhaps it was not Rabh Hamnuna's own recommendation. In Alfasi's version of the text, that recommendation is attributed to Rabh Papa. Perhaps, too, this final recommendation is that of the Talmud's editors.⁸ In any case, it reflects what has since become standard Jewish practice,⁸ and it also illustrates the Rabbinic predilection for avoiding an "either/or" decision by saying "Both!"

Another example of this law's operation may be seen in that rubric of the daily Morning Service which is called "The Verses of Song." That rubric, composed of whole Psalms, concatenations of verses from the Book of Psalms, and other poetic passages from the Bible, with benedictions introducing and concluding this material, was a matter of private devotion, rather than of public worship, until the thirteenth century. Even so, there was some discussion in the talmudic period as to what that particular rubric should contain; and different suggestions were made.

When Rabbi Yosé expressed the wish that his "portion might be with those who complete the Hallelujah-Psalms (Psalms 145-150) every day,"⁹ then those six Psalms must have been the *maximum* number of Psalms, beyond which even the pietists had no ambition to go; and one would assume that ordinary Jews at that time were satisfied with a still smaller number of Psalms. There were, of course, also other suggestions. In the long run, it seems that every single suggestion was adopted, so that, not counting the introductory and concluding benedictions, the "Verses of Song" cover more than twenty-five pages on Sabbaths and festivals, and fifteen pages on weekdays in an Orthodox prayerbook.¹⁰ If one were really to give those many passages of biblical poetry the attention they deserve, one would probably never get around to the actual Morning Service itself; and it is, in fact, somewhat doubtful whether the ordinary worshipper, who rushes through this material on a weekday morning, derives any inspiration or edification from it at all. But this, too, is an illustration of the law: "When the choice is between one or more versions of a prayer, the usual decision is to say them all."

Not every instance of that law's operation is quite that onerous. Sometimes parallel versions of the same prayer are merely distributed over different services, rather than recited one after the other. This, for example, is the case with the last of the Eighteen Benedictions, the prayer for peace, of which the Ashkenazi Rite, but not the Sephardi one, knows two versions — a longer prayer¹¹ and a shorter prayer.¹² The longer version is used in the Morning Service, and the shorter version is used in the

8. Cf. Joseph H. Hertz, ed., *The Authorised Daily Prayer Book*. Revised edition (New York: Bloch, 1948), pp. 12-14.

9. B. *Shabbath* 118b.

10. Cf. Hertz, *Op. cit.*, pp. 52-104.

11. Cf. Hertz, *Op. cit.*, p. 154.

12. Cf. Hertz, *Op. cit.*, p. 294.

Afternoon and Evening Services. Similarly, Psalm 18:51, which is used at the conclusion of the Grace after Meals, has a parallel in II Samuel 22:51. But the parallels are not altogether identical. A slight change in the vocalization of the first word (*magdil* and *migdol*), implying a not so slight change in meaning, constitutes the difference between the two versions. The solution offered by Tradition is to recite Psalm 18:51 on weekdays, and II Samuel 22:51 on Sabbaths and festivals.¹³

(3) "*Talmudic liturgical requirements are predicated on the non-existence of written prayerbooks; but this fact is ignored by later authorities.*" However much modern Jews may tend to identify "praying" with reading a set number of pages in a prayerbook, the fact remains that written prayerbooks were not used by the Sages of the talmudic period. Not only were they not used, but written versions of the prayers were condemned in principle: "Those who write down benedictions are like those who would burn the Torah!"¹⁴ We can only speculate why the ancient Rabbis felt so strongly about this subject. Perhaps one of their reasons was the fear that the *reading* of the prayers would interfere with the spontaneity which they considered to be so essential. Be that as it may, the first complete Jewish prayerbook was written in the ninth century by Rabh 'Amram Gaon, in reply to an inquiry from a Jewish congregation in Spain as to what a proper Jewish worship service must contain. By then, of course, the liturgical material had grown beyond anything which the early Rabbis had ever required; and the committing of all of that material to writing may indeed have become an absolute necessity, in order to save many a prayer from oblivion. Even so, until the invention of movable type and the availability of printed prayerbooks it is hard to conceive of the majority of Jews as owning prayerbooks. Only wealthy individuals could afford to pay a scribe the wages for a complete manuscript of Jewish prayers; and in many a medieval synagogue there may not have been more than one such manuscript on the premises. That is why some of the old Rabbinic presuppositions about worship retained their validity even after the prohibition of writing down prayers had long been ignored.

For example, the practice of responding with "Amen" to the prayer leader's recitation of a benediction made it possible for those, who did not themselves know the text of a benediction or of a prayer, to "fulfill the commandment" as though they had actually recited the full benediction or prayer. On the other hand, the availability to the prayer leader of a written text should have called into question, but did not, the practice of always, except in the case of the Evening Service, reciting the Prayer of the Eighteen Benedictions twice, once silently, and once for the congregation to hear (and respond to with "Amen"). For the "silent recitation" by the prayer leader goes back to the time when the prayer leaders were not

13. Cf. Hertz, *Op. cit.*, p. 978.

14. B. *Shabbath* 115b.

as yet in possession of written texts, and when they had to be given time "to arrange their thoughts" and, possibly, to think of their verbal "innovations" for the day. With a written text in front of him, the prayer leader no longer needed that time for preparation; and a single recitation of the Prayer of the Eighteen Benedictions might have been enough.

Once printed prayerbooks became available to congregations composed of literate worshippers, able to read the printed prayers, the question should have been raised whether there was any need for the prayer leader to recite the Prayer of the Eighteen Benedictions aloud in the first place, or whether it was not sufficient for the congregation, following the printed text, to pray that Prayer in silence. But that question, too, was not raised; and the procedure of reciting the Prayer of the Eighteen Benedictions twice in succession at every service, except for the Evening Service, was maintained as though one still lived in the classical period of Rabbinic Judaism, when written prayer texts were proscribed, and as though Johann Gutenberg in the fifteenth century — quite unintentionally, of course — had not revolutionized the whole character of Jewish worship.

It should, perhaps, also be added that, if those questions had been raised, the raising of an even more fundamental question would have been the inescapable consequence. Seeing that the Jewish prayer leader (technically known as the "messenger of the congregation") was not in any way a sacerdotal personage, and originally owed his position solely to the circumstance of having to "lead" a congregation without prayerbooks in the recitation of the mandatory prayers, what changes in his function, it could now have been asked, were now called for, when his role as "prompter" had become superfluous? Perhaps the transformation of the "messenger of the congregation" into a "cantor," i.e., a performer of vocal music, in the traditionalist synagogues, might indicate that there was some kind of — unspoken — realization that the *original* function of the "messenger of the congregation" had largely become redundant. But what is one to make of the Reform rabbis who, having assumed the role of prayer leaders, read English prayers (printed in the books all congregants have in their hands) to their congregations, preside over the "unison readings" of the congregations, and put their congregants through their paces in the "responsive readings" of English texts? Here, too, it seems that the full implication of the availability of printed prayerbooks has not as yet been faced. We thus have a confirmation from a rather curious quarter of the operation of the law: "Talmudic liturgical requirements are predicated on the non-existence of written prayerbooks; but this fact is ignored by the later authorities."

However, there is one exception to this law which should be noted. Just as emphatic as the early Rabbis were in asserting that prayers must not be written down, so emphatic are some of their latter-day successors in asserting that prayers must be read from a prayerbook. Seligman Isaac Baer (1825-1897) edited, in 1868, a prayerbook which became the

standard edition of the Orthodox Ashkenazi Rite — not only in Germany, but also in other countries.¹⁵ Like other editors of traditionalist prayerbooks, Baer prefaced the actual prayer texts with a summary of the “Laws of Prayer” (*diné tephillah*) and, as a component of those “laws,” he demands: “One must not pray by heart, but only from a prayerbook!”¹⁶ That almost sounds as though written or printed prayerbooks had been in existence since the beginning of time, or at least since the days when the Rabbis of the Mishnah and the Gemara began to formulate the “Laws of Prayer.” And yet Baer, as is evident from his learned commentary on the prayerbook, knew far better than most of his contemporaries that the individual components of the prayerbook all had a history of development behind them, that the various liturgical Rites, still in use among traditionalist Jews, differ in the wording of any number of the prayers, and, above all, that “prayerbook prayers” were hardly the kind of devotion which the framers of the classical liturgy had in mind!

We thus have a phenomenon where, on the one hand, procedures originating at a time when there were no written or printed prayerbooks are carried on as though printed prayerbooks had never been universally adopted, and where, on the other hand, the exclusive use of the printed prayerbook has become invested with the authority of Rabbinic Law, as though the Rabbis who had first formulated the “Laws of Prayer” had not frowned on written prayer texts, and had not encouraged the Jews “to innovate something every day” in their prayers! But it is here that the comparison with the medieval cathedral, which we have mentioned, might help to make some sense of this situation.

The Romanesque style and the Gothic style are two different styles of medieval architecture. There are churches which are built in one style, and there are churches which are built in the other style. But there are also cathedrals which began to be built in the Romanesque style, and which later generations continued to build in the Gothic style; and the total appearance of those cathedrals is none the worse for the combination of the two different styles. And Jews who are in the habit of more than occasional worship seem to have assimilated with ease the combination of two entirely different styles — the “unwritten” and the “written” — in the Jewish liturgical tradition.

(4) “Concern with the need not to ‘bother the congregation’ has atrophied in the course of the millennia.” The initial framers of the Jewish Liturgy seem to have had an awareness of the limited span of attention possessed by ordinary mortals. They also seem to have known that, at any rate on weekdays, Jews, in addition to worshipping their Creator, also have to

15. See the Preface to the 1891 edition of Simeon Singer’s *Authorised Daily Prayer Book*, published in London, where Singer states that the “correct text” which he furnishes has been “founded for the greater part upon S. Baer’s *Abodath Israel*.”

16. S. Baer, ed., *Seder 'Abhodath Yisrael* (Roedelheim, 1868), p. 10.

devote themselves to earning a livelihood. That is why Rabbinic literature knows of a concept called “bother of the congregation” (*torah tsibbur* in Hebrew, *tirha detsibbura* in Aramaic). The early Rabbis strove to keep the act of worship free of any admixture of “bother of the congregation.”

For example, there were some Rabbis who felt that it might be a good idea to add the oracles of Balaam to the three paragraphs of the “Hear, O Israel,” but they did not do so because of the “bother of the congregation” which would have been involved.¹⁷ Of Rabbi Akiba we read that, when he prayed with a congregation, he would make his prayer short. But when he prayed by himself, he would indulge in so many bowings and prostrations that he would begin in one corner of the room and end up in another.¹⁸ In a parallel report of Rabbi Akiba’s worship habits, it is specifically stated that, when praying with a congregation, he would make his prayer short, “*so as not to bother the congregation.*”¹⁹

In fact, the early Rabbis saw no particular virtue in long prayers *per se*. Rabbi Eliezer pointed out that, while Moses, according to Deuteronomy 9:25, prayed for forty days and forty nights, and was indeed answered by God, he was also answered by God, when, according to Numbers 12:13, he uttered a prayer consisting of five Hebrew words only!²⁰ But this neutral attitude towards the length of prayer, and the conscious avoidance of “bothering the congregation,” are hardly in evidence in the later stages of Jewish liturgical development — at any rate, not until the rise of Reform and Conservative Judaism in the nineteenth century.

The reason for this lies in the circumstance that this early concern came into collision with what we have described as the first law of Jewish liturgical development: “One generation’s spontaneity becomes another generation’s routine.” That first law held such universal sway that it effectively set aside all other considerations.

When the Orthodox Rabbinical Court of Hamburg, in 1819, issued a collection of responsa to anathemize the — relatively moderate — liturgical changes which had been introduced in the Hamburg Reform Temple, the very title-page of that responsa collection proclaimed: “It is forbidden to change the order of prayers which is customary in Israel, from the Morning Benedictions until after ‘*Alenu*’; and all the more is it forbidden to omit anything from it.”²¹ Those few words say it all. Never mind that, according to talmudic teaching, the so-called “Morning Benedictions” were meant to be recited at home, upon awakening, when one answered Nature’s call, washed one’s hands, put on one’s shoes, one’s belt and one’s head covering, etc., etc., and that they were, therefore, not an

17. B. *Berakhoth* 12b.

18. *Tosephta Berakhoth* 3:5, ed. Lieberman, p. 12.

19. B. *Berakhoth* 31a.

20. B. *Berakhoth* 34a.

21. *Eleh Dibhré Haberith* (Altona, 1819), title-page.

item of *public* worship at all.²² Never mind that, until the Middle Ages, the 'Alenu was used only within the Additional Service of the High Holy Days, and did not become the concluding prayer of every Jewish worship service until the time of the Crusades. Never mind even that, in that very city of Hamburg at that time, there was a Sepharadi community which used a liturgy differing significantly from that presupposed by the Orthodox Rabbinical Court, including the omission of the second paragraph of the 'Alenu prayer. The Orthodox Rabbinical Court of Hamburg was wholeheartedly committed to the proposition that, once a prayer had found its way into the prayerbook, it could never be dislodged from there again unto all eternity.

If one accepts this proposition, and the members of the Orthodox Rabbinical Court of Hamburg in 1819 by no means stood alone in their acceptance of it, it follows that considerations of the kind which led an earlier generation of Rabbis to prevent the "bother of the congregation" were no longer accorded the respect they could command in the classical period of Rabbinic Judaism; and one is forced to conclude that "concern with the need not to 'bother the congregation' has atrophied in the course of the millennia."

(5) *"The 'Conservative' and the 'Reformer' are perennial types in the history of Jewish Liturgy."* 'Conservative' and 'Reformer' are *not* used here in their modern, "denominational" connotations. Rather do we mean by 'Conservative' here the person who is committed to the conservation of the past in as unchanged a form as possible, whereas by 'Reformer' we mean the person who is not afraid to innovate when circumstances seem to demand innovation. Liturgically speaking, the 'Conservative' is the person who says: "The prayerbook which was good enough for my grandparents is good enough for me — in its unchanged form." And the 'Reformer' is the person who says: "The prayerbook which my grandparents used was certainly good enough for them. But, without certain changes, it does not meet my spiritual needs."

It should be noted here that the "changes" advocated by the 'Reformer' could consist of *additions* as well as deletions, just as the 'Conservative' endeavors to ward off additions as well as deletions. Both additions and deletions (and not only the latter, as is commonly and mistakenly thought) impugn the unmodified past's ability to meet all the needs of the present. That is why 'Conservatives' and 'Reformers' *as types* exist in *all* branches of modern Judaism — just as they have always existed in the past. The modern Reform Jew who refuses to trade in his "classical Reform" *Union Prayer Book* for the supposedly more "traditional" *Gates of Prayer* represents the 'Conservative' type every bit as much as do certain Orthodox rabbis in the State of Israel who, although they may have come to tolerate the singing of the *Hallel* Psalms on Israeli Independence Day,

22. B. *Berakhoth* 60b.

still emphatically draw the line at introducing the singing of those Psalms with a benediction (*berakhah*). And the introduction of a new “meditation” within the structure of the Seven Benedictions of the Sabbath Additional Service in the American Conservative prayerbooks may, perhaps, be a lesser “reform” than the total omission of the Sabbath Additional Service from the American Reform prayerbook; but it *does* constitute a *reform*. For it does make it quite obvious, as do the verbal changes introduced in the traditional text itself, changing a hope for the future into a reminiscence of the past, that the Additional Service as recited by one’s ancestors no longer, in its unchanged traditional form, meets the spiritual and devotional needs of today’s Conservative Jews in the United States.

We are now ready to cast our glance backward to earlier stages of Jewish liturgical development. What we have already described as the first law of that development, i.e., that one generation’s spontaneity becomes another generation’s routine, remains paramount. Whatever has gained entry into the worship service remains there to stay — as the Orthodox Rabbinical Court of Hamburg made perfectly clear in its 1819 attack on the relatively minor liturgical reforms introduced by the Hamburg Reform Temple. But it would be a mistake to assume that this first law of Jewish liturgical development found its application without, in every instance, being preceded by considerable friction between ‘Conservatives’ and ‘Reformers.’ For, although that law might be regarded as the incarnation *par excellence* of the ‘Conservative’ principle, the fact remains that, each time one generation’s spontaneity was added to the already crystallized liturgical material of the past, a liturgical “reform” was being effected. Under the circumstances, it is interesting to note that, in the long run, the ‘Reformers’ always carried the day — even over the objections of recognized rabbinical authorities.

This may be illustrated by the all but universal acceptance of medieval synagogal poetry — in spite of some rather weighty arguments which were presented against it on the basis of Jewish law.²³ It can be seen in the dominant role which the *Kol Nidré* formula plays in the Atonement Eve Service, even though some Babylonian Geonim had rejected the use of that formula on that occasion as a “nonsensical custom.”²⁴ And it can be verified in the celebration of the *Simḥath Torah* Festival, which, at the time of its origin, also had to overcome its ‘Conservative’ opponents.²⁵

‘Conservative’ and ‘Reformer’ are, therefore, recognizable as perennial types in the history of Jewish Liturgy. Moreover, there is a corollary to this, which may be stated as follows: “One generation’s ‘Reformer’

23. Cf. A.A. Wolff, *Die Stimmen der ältesten glaubwürdigsten Rabbinen über die Pijutim* (Leipzig: Leopold Schnauss, 1857); and Jakob J. Petuchowski, *Theology and Poetry — Studies in the Medieval Piyut*. (London: Henley / Boston: Routledge & Kegan Paul, 1978), pp. 11-19.

24. Cf. B.M. Lewin, ed., *Otsar Ha-Geonim*, Vol. XI (Jerusalem, 1942), pp. 21-24.

25. Cf. Robert Gordis, *Judaism for the Modern Age* (New York: Farrar, Straus, and Cudahy, 1955), pp. 195-203.

becomes the pillar of 'Conservatism' in the eyes of a succeeding generation." When, for example, attempts were made, in the nineteenth century, to reduce the amount of medieval poetry used in the worship service, and to abolish the *Kol Nidré* formula, both of them liturgical practices originally introduced by 'Reformers' over 'Conservative' objections, those original 'Reformers' were *now* invoked as the "traditional authorities" against whose venerable institutions the *latter-day* 'Reformers' were sinfully wrong to inveigh.

(6) "*The ultimate authority in matters liturgical is the printer.*" As late as the fourteenth century, David Abudraham, a Spanish-Jewish liturgical scholar, could still assert:

You will not find a single place in the world where the Prayer of the Eighteen Benedictions is totally identical in wording with the Prayer of the Eighteen Benedictions recited in any other place. Rather are some words added in one place, and some words omitted in another place.²⁶

That was asserted after the old Rabbinic proscription of written prayer texts had long since fallen into oblivion, and after prayer manuscripts had been in use for a number of centuries. Even so, Abudraham noticed the infinite number of variant readings extant even in the standard prayer *par excellence*, the Prayer of the Eighteen Benedictions. We can assume that each such version of the Prayer of the Eighteen Benedictions must have had the *nihil obstat* of at least the local rabbinic authority. We can furthermore assume that, if such variety was possible in the Prayer of the Eighteen Benedictions, it was even more likely to obtain in some of the other components of the Liturgy. No doubt, there was still an awareness of the fact that the old Rabbinic framers of the Liturgy had not fixed the wording of the various prayers — even though, some years before, the Jewish Pietists of Germany had already counted the letters of the prayers *they* were in the habit of reciting, had found a mystical significance in those numbers, and had denied the efficacy of prayers the letters of which failed to add up to the requisite numbers.²⁷ But that approach, at least as far as the particular wording of the prayers used by the *German-Jewish* Pietists was concerned, would hardly seem to have been shared by Jews in other geographical regions.

Abudraham, as we have mentioned, wrote in the fourteenth century. In the fifteenth century, Gutenberg wrought the printing revolution; and already in that fifteenth century the first Jewish prayerbooks were printed. They were prayerbooks reflecting the Roman Rite. Subsequent Jewish prayerbooks, too, were not designed for universal Jewish use, but were confined to specific Rites in use in specific geographical regions.

26. *Sepher Abudraham* (Prague, 1784), p. 30a.

27. Cf. *Sepher 'Arugath Habosem*, ed. Efraim E. Urbach, Vol. IV (Jerusalem: Mekize Nirdamim, 1963), pp. 73ff.; and *Siddur of R. Solomon ben Samson of Garmaise including the Siddur of the Haside Ashkenaz*, ed. Moshe Hershtler (Jerusalem, 1971), p. 31 and *passim*.

Even so, a certain uniformity was introduced which had not been there before. Prior to the availability of printed prayerbooks, four or five congregations in the same geographical region might have been accustomed to as many different wordings of a given prayer, based on the particular prayer manuscript used by a local congregation. That came to an end with the unifying effect of the printed prayerbook used by *all* the congregations in that region.

Something else came to an end, too. The operation of the law that "one generation's spontaneity becomes another generation's routine" had as its precondition the existence of an "open-ended" Liturgy. New elements were constantly being added. That process could not continue once the limits of "what was being said" were clearly circumscribed by the printed and bound prayerbook. That is why the ultimate decision about the total contents of the worship services rested with the printer, and not with any rabbinico-liturgical authorities. Once the ordinary worshippers had inherited printed prayerbooks from their parents and grandparents, the particular printed version of the Liturgy in hand assumed a "canonical" status, suggesting to the unlearned that, even if that particular prayerbook was not given by God to Moses on Mount Sinai together with the Torah, it must at least have been composed by the Men of the Great Synagogue, or, failing that, by the Sages of Yavneh at the very latest.

Thus it came about that, from the fifteenth century on, and until the rise of Reform and Conservative Judaism in the nineteenth century, the prayerbook remained "closed" to any further influx of elements of "spontaneity." There were, admittedly, two exceptions. In the sixteenth century, the Lurianic Kabbalists managed to infiltrate the already existing prayerbooks with some of their mystical formulae and also with the beautiful service of "Welcoming the Sabbath," which, prior to that time, had not been a part of the Sabbath Eve Service.²⁸ And in the eighteenth century, the newly founded sect of East European Hasidim created an altogether new liturgical Rite by producing a hybrid version of the Ashkenazi and the Sepharadi Rites, suffused with mystical meditations. But apart from those innovations of the mystics, only the first of which affected Jewry as a whole, nothing was added to the printed prayerbook for some three hundred years; and, as far as Orthodox Jews are concerned, nothing has been added or deleted in the nineteenth and twentieth centuries, either.

In the realm of synagogal poetry, too, the printer has had the decisive say. Even though the initial objections to the use of that poetry had been overcome, there always lingered the knowledge, vague at times, that the recitation of those synagogal poems was optional, rather than mandatory. Moreover, different local communities used to opt for different poetic selections, with preference often given to the products of local

28. Cf. Hertz, *Op. cit.*, pp. 345-359.

talent. But once the printed prayerbook made its appearance, the state of affairs was to change radically. In the first place, a poem, whatever its degree of intelligibility, if printed as a part of the standard rubrics of the worship service, assumed the authoritative look of something that “has to be said.” In addition, the printer — and who can blame him for that? — also had to be a business man. The more poems of purely local usage he could incorporate in a regional prayerbook, or even in a prayerbook meant, say, for all of Ashkenazi Jewry, the more copies of that particular edition he was able to sell — without bearing the cost of printing a number of different and much smaller editions for purely local markets. Yet once various local selections were united in a single prayerbook, it did not take long before the *totality* of the printed poems came to be recited by *all* of the congregations in which that particular printed prayerbook was used. We see, then, that “the ultimate authority in matters liturgical is the printer.”

(7) “*There is, and there is not such a thing as ‘the’ traditional Jewish prayerbook. There is less of one than some Orthodox Jews would like to believe; and there is more of one than some Reform apologists are willing to admit.*” (“Orthodox” and “Reform” in this particular context are used in their modern, “denominational” sense.) This is not so much a law of Jewish liturgical development in its own right as it is a conclusion to which the various laws, previously discussed, inevitably point.

If, in a discussion, the existence of “the” traditional Jewish prayerbook is asserted, the one who makes that assertion can always be embarrassed by the question: “*Whose* traditional Jewish prayerbook?” Surely, in view of all the evidence available, nobody would insist that Rabh Sa’adya Gaon’s prayerbook was identical with Rabh ‘Amram Gaon’s prayerbook, or that the prayerbook of Maimonides was identical with either of them. Nor could it even be claimed that the crystallization of the Ashkenazi Rite, as we find it in the twelfth-century *Mahzor Vitry*, was reproduced in every single detail when S. Baer, in 1868, produced his edition of the standard Ashkenazi Rite of *his* day. Add to that the many fragments which have been discovered of the ancient Palestinian Rite and of other Rites no longer in use, and the strength of the argument against the existence of something which could be described as “the” traditional Jewish prayerbook is even further increased.

So much for the *historical* dimension. But something like “the” traditional Jewish prayerbook does not even exist in *contemporary* Orthodox Jewish usage. There are *various* “traditional Jewish prayerbooks,” not one of them quite identical with any other, which today’s Orthodox Jews use for their devotions — depending upon the geographical provenance of those Jews or of their ancestors. There is the Southwest Ashkenazi Rite, and there is the Eastern Ashkenazi Rite, called “the Polish Rite.” There is the Sepharadi Rite of London and Amsterdam, which claims to be the “pure” Castilian Rite, and there is the Sepharadi Rite of North Africa,

which is used in today's Madrid synagogue. There is the mixed Ashkenazi-Sepharadi Rite, adopted by the Hasidim and confusingly called "*Nosah Sepharad*," and there is the Italian Rite. There is the Aleppo Rite, and there is the Baghdadi Rite. There is the Yemenite Rite, and there are the local variants of the Ashkenazi Rite for places like Russia, Bohemia and Hungary. Which of them represents "the" traditional Jewish prayerbook? They *all* do! There are Orthodox Jews who use those different prayerbooks, and yet recognize the legitimacy of one another's devotions. On closer inspection, Orthodox Judaism turns out to be not nearly as monolithic as is often thought by its detractors and its defenders alike. There is "liturgical pluralism" even within the Orthodox ranks.

That is an important facet of Jewish devotional life, and it should preclude any invocation of "the" traditional Jewish prayerbook when disapproval is voiced of minor liturgical changes which some modernist synagogues have introduced. But, and this is the other side of the coin, a reference to "the" traditional Jewish prayerbook is indeed out of order only as long as the changes of which one disapproves are really of a *minor* character. For the many Orthodox prayerbooks do differ one from another primarily in minor matters. There is variety when it comes to the question as to whether this Psalm ought to be recited before that Psalm, or the other way around. There is variety in the choice of synagogal poetry and on whether or not that poetry may be inserted into the standard prayers, or whether standard prayers and poetry ought to be recited separately. And there is variety in the wording of the prayers — even of such staples as the Prayer of the Eighteen Benedictions and the *Kaddish*.

For example, in the sixteenth benediction of the former, the Ashkenazim invoke God "who in mercy hears the prayer of Your people Israel," while the Sepharadim invoke God "who hears the prayer of every mouth." And the Hasidim, in their hybrid *Nosah Sepharad*, invoke God "who in mercy hears the prayer of every mouth of Your people Israel" — even though the grammatical construction in Hebrew leaves something to be desired here.²⁹ And in the *Kaddish*, the Sepharadim include, and the Ashkenazim omit, the words: "And may He cause His salvation to sprout, and may He bring near His anointed." This happens to be one of the Sepharadi elements which the Hasidim have included in their prayerbook; and in congregations where Jews of Galician provenance (usually of the Hasidic persuasion) and Jews of Lithuanian provenance (usually opposed to Hasidism) attempt to worship together, the prayer leader's uttering or keeping back of those four Aramaic words serves as a shibbo-

29. Cf. Hyman A. Segal, ed., *Siddur Tifereth David — Sephard* (New York: Hebrew Publishing Company, 1951), p. 58. Note, however, that, in his more careful edition of the *Nosah Sepharad*, *Siddur Tephillath Yisrael* (Tel-Aviv: Massadah, n.d.), p. 58, Daniel Goldschmidt gives the Ashkenazi formulation and the Sepharadi formulation as *alternatives*, and avoids the ungrammatical conflate version which is enshrined in Segal's edition.

leth of his own religious sympathies — and quite frequently as the opening gambit of a congregational shouting match, if not indeed of worse.

Withal, we are dealing with *minor* variations. When it comes to the major rubrics, laid down by the Rabbis of Mishnah and Gemara, *all* the various Rites have them. They also *all* have the three paragraphs of the “Hear, O Israel,” just as they *all* have the Eighteen (really, Nineteen) Benedictions, although there are variations in the wording of the individual benedictions. Last but not least, however different the wording might be as between one Rite and another, they *all* express the same religious convictions, and they *all* subscribe to the same theology. (Which, incidentally, is not meant to imply that any one prayerbook expresses only one consistent theology!)

From that broader perspective, therefore, one might, on occasion, be justified in speaking about “the” traditional Jewish prayerbook. And, again from that broader perspective, pointing out that the Ashkenazi Jews do, and the Sepharadi Jews do not have the poem, *unethanneh toqeph*, in their respective High Holy Day services hardly serves as a real justification, in terms of an appeal to “the pluralistic liturgical tradition of Judaism,” for some modernists who would omit one or more paragraphs of the “Hear, O Israel” from their reformed prayerbooks. There are major changes and variations, and there are minor changes and variations. Major changes in the past may serve as precedents for major changes in the present; and minor changes in the past may be invoked as precedents for minor changes in the present. But minor changes or variations in the past do not really justify major changes today — however much those major changes may be justified on *other* grounds. Sometimes the denial of the existence of “the” traditional Jewish prayerbook may be as pointless as, at other times, the affirmation of that existence. For “there is, and there is not such a thing as ‘the’ traditional Jewish prayerbook. There is less of one than some Orthodox Jews would like to believe; and there is more of one than some Reform apologists are willing to admit.”

Rabbis and Rabbis

ROLAND B. GITTELSON

Scene: Carnegie Hall, New York City

Time: A crisp October morning, 1919

Occasion: Regular Religious Service of The Free

Synagogue, Rabbi Stephen S. Wise officiating

Background: Employees of the United States Steel Corporation were attempting, for the first time, to organize a union, rebelling against the arrogant, high-handed feudalism of Judge Elbert Gary, Chairman of the Board of U.S. Steel. They were being accused of subversion, of threatening the very foundations of American society. Wise, who had already visited the Pennsylvania mills in support of the workers, was about to preach the first of two sermons on the subject.

JUST BEFORE WALKING OUT ONTO THE pulpit, Rabbi Wise turned to his wife and said: "Louise, my new synagogue building is going up in smoke today." The building to which he referred would be the first in his congregation's history and a campaign to raise funds for its construction had just been commenced. The sermon topic that morning was: *Who Are the Real Bolsheviks?* The thrust of Wise's message was a denunciation of the steel executives for denying basic human rights to their workers. Some of his own wealthier Board members, the very individuals on whom he had to depend for building fund contributions, owned substantial investments in U.S. Steel. Others feared that the drive toward unionization, if successful in this instance, would soon threaten their own industries. Wise's prediction to his wife came true and many pledges already made to the building fund were withdrawn. As a result of that sermon, the whole project had to be abandoned and it was not until five months after Stephen Wise's death, three decades later, that his congregation was able to dedicate its first synagogue building.

In that memorable sermon of 1919 Rabbi Wise spoke words which we today should remember and cherish:

I know that there are penalties, many and grave, which are likely to attach themselves to this address. It is clear to me that there are scores of manufacturers, large and small, within the ranks of this congregation, who may for a time in any event take serious exception to my thought. Some of them will doubtless determine to refuse to lend their help to the building of the Synagogue Home that has long been planned. I am ready to bear every

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burden and to pay every penalty. The one thing I am not ready to do is to conceal my inmost convictions. Better the truth spoken in this hired meeting place, or in the littlest or humblest of meeting places, than concealment of conviction and evasion of truth in the most cathedral-like synagogue structure.

All too few of Stephen Wise's rabbinic contemporaries heeded his words or followed his example. Today the proportion who do so is even smaller. Why? In part, because the mood of our time is one of reaction and retreat, of escape into mysticism and contemplation rather than of confrontation and challenge. Rabbis are tempted to bend before the prevailing winds of the larger society. But the answer goes beyond so simple and obvious an explanation. It includes also a failure on the part of many Jews, including rabbis, to understand the dual historic nature of the rabbinate.

At first glance, it may appear that this is a matter of prime concern only to rabbis. Not so! If a majority of Wise's congregants had not accepted his message as an authentic expression of Judaism, he would have lost more than a synagogue building. To be an effective and honest leader, a rabbi must reflect the most urgent imperatives and thrusts of Jewish tradition. This is a truth which all Jews — laypeople no less than rabbis, even those who do not belong to congregations — must accept.

* * *

There were no rabbis until after the first century of the Common Era — priests and prophets, but no rabbis. The province of the priest was to implement the sacerdotal practices of the ancient Temple; the prophet was a moral goad and guide. Today's rabbi is, or should be, a synthesis, an amalgam of priest and prophet. As priest, he or she officiates at services of worship, presides at such ceremonies as weddings, funerals and Bar/Bat Mitzvahs, and counsels congregants at times of weakness or doubt. As prophet, the rabbi must commence by perceiving the true nature of ancient prophecy.

The Hebrew prophets were not soothsayers or fortune-tellers. If they presumed to predict the future, and they often did, it was not by tea-leaf or crystal ball, but as the meteorologist predicts the weather, using knowledge of nature's physical patterns and laws to forecast the probability of sunshine or rain. Similarly, the prophet uses his awareness of nature's spiritual sequences to anticipate what is likely to happen to individuals and societies. He bases his predictions on the premise that certain kinds of behavior invariably lead to certain types of result. Stephen Wise perceived his task as transposing the prophetic method and message into a modern key, applying moral truth to the most urgent and vexing of contemporary problems.

Can that be done? Is it really possible — without prostituting the intention of Amos or Isaiah — to speculate on what those prophets would

say about price-fixing or excessive profits or tax rates? Yes, it is possible, provided we remember that in the midst even of swiftest change some things remain the same. The law of gravity, for example. The builder of pyramids and the designer of space ships must reckon with exactly the same law of gravity. For either of them to ignore or defy it would mean instant disaster. Each, obviously, deals within the context of the knowledge and technology available, but the basic principles remain constant.

So it is with nature's spiritual norms. Certain kinds of behavior yield predictable consequences, no less today than in the past. True, if Amos or Isaiah were to come alive now, much would confuse them; they would have to learn a whole new vocabulary. But they would quickly discover that the same moral compass which guided them so many centuries ago could still serve today. They would be convinced now, as they were then, that our universe is governed by moral as well as physical law. They would be certain that neither persons nor nations can evade the consequences of their deeds.

There was tension between prophet and priest in ancient times, and much of Jewish history can be understood in terms of that tension. The priest sought to serve his people's immediate needs: to comfort them in sorrow, to reinforce their satisfactions and joys, to provide them with the security of ritual, to reassure them in moments of uncertainty and doubt. These were necessary and altogether honorable purposes. But they differed from, and, at times, were inconsistent with, the functions of the prophet: to chastise those who had done wrong, to remind them repeatedly of how far they had failed to fulfill themselves morally. Aaron was the priest who helped the people build their Molten Calf. Moses was the prophet who smashed the Ten Commandments into shards when he saw that Calf. Here was more than sibling rivalry; it was the difference between two contradictory notions of leadership.

Small wonder that prophet and priest so often clashed. When their differing and conflicting functions are combined in one individual, there is danger of that person's becoming schizoid — or escaping such a miserable fate by defaulting on one or the other major task. The ancient priest did not have to reprove those whom he tried to help; his job was to comfort the troubled. The prophet did not have to collect a salary from those whom he chastized; his task was to trouble the comfortable. The conscientious twentieth-century rabbi must attempt to do both.

Both are important. Congregants, moreover, are entitled to both. If I seem here to stress only the prophetic aspect, this is because too many of my colleagues have minimized it in favor of their priestly responsibilities. It is right that we should try to serve our people in their life crises, that we should counsel them in their troubles and help meet their need for ritual. This is not only right; it is, by far, the easier of our functions. It is also calculated to earn us a larger, easier share of popularity and acclaim.

Precisely for that reason and lest we be seduced by it, we owe it to our-

selves and our rabbinic heritage to emphasize especially our prophetic obligations. Our congregants share this responsibility: not only should they ungrudgingly accept the prophetic preachments of their rabbis, they should insist upon them! If not, they allow themselves to be cheated.

We Jews have less choice in this matter than do others. Professor Yehuda Bergmann explains that the primary emphases of the world's major faiths flow from the reactions of their respective founders. Buddha was so embittered by what he saw of society that he became a recluse, withdrawing from social concerns and concentrating almost exclusively on inner contemplation. Jesus was disillusioned by worldly immorality to the point of concluding that not on this earth but only in the Kingdom of Heaven could salvation be achieved. Mohammed was so appalled by human evil that he predicted the destruction of the world; only through faith in Allah and offering their lives in his service could human beings hope for redemption in an afterlife. Moses was the sole exception. Witnessing the agony and pain his people suffered in Egyptian slavery, he jumped actively into the fray, coping with this life and this world, leading the Israelites to freedom.¹

* * *

Our prophets followed the paradigm of Moses. Take the first Isaiah, for example. He thundered:

Woe to those who add house to house
And join field to field,
Till there is room for none but you
To dwell in the land!

Innocent, harmless words, aren't they? Until we transpose them into a contemporary key. If the relatively modest concentrations of wealth by landowners in the sixth century BCE so aroused Isaiah's ire, can there be much doubt how he would feel about giant agribusiness today? Or about one corporation which controls well over half our nation's automotive production and much of its military manufacturing, which paces pricing for the whole industry, which handles more money in a year than the combined treasuries of forty states? Or about OPEC and gargantuan international oil cartels which inflate their profits so extravagantly while millions find it impossible to drive their cars and heat their homes? Or about huge steel corporations which devastate entire cities by unilaterally closing plants without regard for the welfare of communities or employees?

Today — however uncomfortably it may threaten their vested interests — rabbis are obliged to update the words of Isaiah, to speak in his spirit and name about the fact that the 200 largest corporations in the United States, which controlled 45% of our manufacturing assets at the

1. M.M. Kellner, ed., *Contemporary Jewish Ethics*, Sanhedrin Press, 1978, p. 230f.

end of World War II, dominated 60% of them in 1980. That 1% of our manufacturers control 88% of manufacturing assets and reap 90% of all manufacturing profits. Isaiah knew nothing of automobiles or steel girders or corporations. But he was thoroughly familiar with greed, with the injustice which inevitably results from too much in the hands of too few.

In like manner, Amos was an expert on the subject of business ethics:

Listen to this, you who devour the needy, annihilating the poor of the land, saying, "If only the new moon were over, so that we could sell grain; the sabbath, so that we could offer wheat for sale, using an ephah that is too small, and a shekel that is too big, tilting a dishonest scale, and selling grain refuse as grain! We will buy the poor for silver, the needy for a pair of sandals."

No trustee of a congregation has ever objected to a rabbi's reading these words from the pulpit or teaching them in a Bible class. It becomes an entirely different matter, however, if he interprets and applies them, if he points out that while they are archaically poetic, their meaning is as relevant and trenchant today as when they were first pronounced. Read them again carefully, with mind as well as eyes. Were he alive now, Amos would be condemning such specific current business practices as false and deceptive packaging, evasion of government regulations, charging exorbitant prices, reaping unjustifiably huge profits, selling defective goods, victimizing the impoverished or marginal consumer.

From Moses to Aaron to Isaiah to the post-biblical rabbis whose teachings are embodied in the Talmud — a steady, consistent line of pronouncement, with very special emphasis on what we today call commercial ethics. An example: in Temple times every Jewish woman was obliged to sacrifice a pair of doves in Jerusalem after each pregnancy, regardless of whether it terminated in a miscarriage or a live birth. These sacrifices were naturally offered on one of the three festivals when Jews would ascend from every part of the land to the Temple. It frequently happened, however, that a woman was unable to make her pilgrimage for several years. In that event, she might well be expected to offer several pairs of doves, not just one. Aware of this, merchants would seasonally increase the price of doves. (Read: law of supply and demand.)

We are told in the Talmud of a time when the price of a pair of doves had been artificially inflated to two golden dinarim, many times their normal cost. Whereupon Rabbi Simeon ben Gamliel decreed that one pair would suffice for each woman, no matter how many times she had been pregnant since offering her last sacrifice. By the end of the same day, doves were selling for one-fiftieth of their price that morning! It is not hard to imagine the anger with which dove merchants must have approached Rabbi Simeon: Who does he think he is, mixing religion with business? How does he expect us to contribute to the academies if we can't even make a profit? What does he know about commerce, he who never

even had to meet a payroll? Let him stick to the Talmud and leave practical matters to us!

Another example: Jews were, of course, forbidden to eat any leavened food during Pesah. Because earthenware utensils absorb some of the food cooked in them, the rabbis had decreed that such pots must be broken in anticipation of the holiday. The sellers of new pots tried to take advantage of this by drastically increasing their prices at the end of Pesah when the old pots had to be replaced. Samuel, chief Jewish legal and moral authority of his day, would not allow such abuse, and immediately threatened that unless the merchants reduced their prices to a reasonable level, he would permit the use of old pots. Prices were lowered at once; ethics must prevail in the marketplace.²

Had there been Chambers of Commerce in those days, the prophets and rabbis would have earned no accolades. Had Rabbis Simeon and Samuel been raising funds for a new synagogue, they would have suffered the same disappointment as Stephen Wise. So it is today. The price for rabbinic popularity among affluent congregants may be concentration only on priestly responsibility. The penalty for succumbing to this temptation is a gross betrayal of Judaism.

* * *

I hope to be forgiven for citing some personal experiences. When I adapted the *Al Hayt* on Yom Kippur to make it more relevant and challenging, my liturgical innovation aroused resentment, even wrath, from some businessmen in the congregation. They had no trouble, apparently, with acknowledging such sins as *abuse of power* or *disrespect for parents and teachers* or *hardening our hearts*. These, after all, are categories vague and general enough not to be threatening. What a difference, however, when I asked them to confess: “For the sin we have committed *by false advertising . . . by manufacturing and selling inferior goods . . . by putting property and profit ahead of human welfare*.” Seldom did the season pass without several angry letters. Year after year the matter was discussed by the Ritual Committee and the Board of Trustees.

Finally, by way of wholesale response, I preached a sermon — on Yom Kippur, of course — entitled *When Prayer Pinches*. In it I cited specific examples of the economic sins castigated in my innovative adaptations: a U.S. Senate estimate that deceptive packaging and promotion in the food industry alone cost American taxpayers 14 billion dollars a year . . . a Wall St. Journal report that the annual loss to American consumers due to short-weighting and short-counting ranged between 1.5 billion and 10 billion dollars . . . documented evidence of toys that can easily cripple or kill the children who play with them . . . of new school buses with such potentially fatal defects as faulty brakes, flimsy clutches and

2. Ibid., pp. 335ff.

leaky gas tanks. I quoted passages from the Talmud which prohibited specific categories of business immorality still profusely practiced today.

Similar resentment was ignited when I presumed to approach super-market executives to urge that they cease selling lettuce and grapes produced by those who were attempting to destroy the United Farm Workers. And, again, when I joined delegations of religious and labor leaders to urge that retail department stores refrain from selling the products of J.P. Stevens Co., a firm which, through the years, was notoriously callous to the rights of its workers and which reached a settlement with them only in 1980. It would be naive to pretend that such efforts always succeeded. But they were accepted by most of my members as a legitimate aspect of my rabbinic province. They had proper and appropriate appreciation of what Judaism really teaches. Postscript: in due course the cotton goods and lettuce and grapes were, in fact, withdrawn from sale.

I do not wish to leave the impression that all congregants oppose their rabbis' emphasis on the unique social ethics of Jewish thought. Without attempting the impossible task of drawing up an actual balance sheet, I would dare to guess that through the years there were at least as many families who joined our congregation precisely because of this stress on my part as there were those who may have resigned for that reason. All competent studies of electoral patterns, moreover, reveal that among economically comfortable Jews, far more than with their Gentile counterparts, liberal government policies which would substantially increase the taxes of the wealthy are, nonetheless, approved.

* * *

Stephen Wise . . . Jacob Weinstein . . . Edward Israel . . . Barnett Brickner . . . Maurice Eisendrath: no one of them neglected the personal or ritualistic needs of his congregants; all, without exception, faithfully fulfilled their priestly responsibilities. But they were also among the prophetic giants of the modern rabbinate.

All had members who resented their emphasis on social ethics; of course, they did. But all also had members who supported, even encouraged them. Otherwise, they could not have succeeded, nor even survived.

Where are their disciples today? Hard to find. Too few. Too circumspect. Too cautious. At a major interfaith seminar on business ethics a year or two back the rabbinic participant, who occupies one of our nation's most prestigious pulpits, cited as his prime example of current commercial immorality — the stealing of towels by hotel guests! His congregants — at least those who understand authentic Judaism and the historic role of the rabbinate — should have felt insulted.

It is time for us — rabbis and lay leaders equally — to demand more of ourselves. To ask and answer a seminal question: if Amos and Isaiah appeared on earth tomorrow, if Simeon ben Gamliel and Samuel attended our next rabbinic or congregational convention, could we face them without apology or shame?

Kashrut and Controversy

MARK F. LEWIS

IN 1978, A NEW YORK JUDGE TANGLED with the question of how to determine whether a particular person was Orthodox. After rejecting a test that would measure the number of *mizvot* he practiced daily, the judge gave up. A person's Orthodoxy, he held, could not be measured by another person "because Orthodoxy is not in the eye of the beholder, but rests in the mind and heart of the beholder."¹

But the same rationale does not apply to the more limited area concerning the practice of *kashrut*. While Orthodoxy may not be able to be rigidly defined, the rules concerning the preparation and consumption of food provide a seemingly objective standard by which one's level of observance can be measured. This has created a paradoxical situation. The Rabbis tell us that the purpose of the dietary laws, apart from any secondary hygienic benefit, is to keep our unique character: "I am the Lord your God who have set you apart from the peoples. Ye shall therefore separate between the clean beast and the unclean. . . ."² Yet because we have this standard by which we can measure another's "holiness," the very rules that are to unite us have often instead served to divide us one from another as rival factions have hurled accusations against each other, and have sought resolution of their conflicts in American courts. Thus the paradox continues, as secular judges have been called upon to decide such matters.

There is also another reason why *kashrut* problems become entangled in the secular legal system. As a recent Torah commentary has noted, "though it is a religious duty for the Orthodox Jew to avoid nonkosher food, the purveying of kosher food is not a religious function but a commercial enterprise."³ As a result, government agencies have a legitimate interest in assuring that certain rules concerning food preparation are enforced. How legitimate that interest is when the courts try to enforce *kashrut* is a more problematic question, which goes to the heart of the First Amendment's concern with the proper roles of religion and state.

These problem areas, as well as some others dealing with *kashrut*,

1. *People v. Goodman*, 92 Misc.2d 927, 402 N.Y.S.2d 114, 118 (Sup. Ct. 1978).

2. *Leviticus 20:24-25*. See also, H. Donin, *To Be a Jew* (Basic Books, 1972), chapter 6.

3. *The Torah: A Modern Commentary* (U.A.H.C., 1981), p. 811.

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will be examined in light of how they have been dealt with in the courts of modern America. Because of its unique features, the area of kashrut provides an excellent model by which we can examine the interplay of religious regulation and secular jurisprudence.

It is a maxim of legal advocacy that when addressing legal issues the Constitutional considerations should be dealt with first. Although at least nineteen states have laws prohibiting the misrepresentation of kosher food,⁴ there have been few reported challenges to the validity of such statutes.⁵ In a 1972 Florida case,⁶ the owners of Miami Beach's Blackstone Hotel had been convicted of violating that city's ordinance prohibiting the false representation of food that was, in fact, not kosher. The hotel claimed that the law was in violation of the First Amendment's prohibition against the establishment of religion. Rather than address this attack head-on, the court took a different approach, stating that the law was merely designed to aid in the free exercise of religion (also a First Amendment concern)⁷ by helping to thwart improper interference with the observance of religious law.

Two years later, a federal district court in New York took the same type of "benign" approach when it upheld the constitutionality of the Humane Slaughter Act, a federal statute that declares that slaughtering "in accordance with the ritual requirements of the Jewish faith" conforms to the public policy of the United States.⁸ The court observed that, in passing this law, Congress had declared its concern with humaneness and the mere fact that this policy might coincide with laws of the Jewish religion did not in any way undermine the validity of the law. As for the argument of improper entanglement of religion and government, the court stated:

[B]y making it possible for those who wish to eat ritually acceptable meat to slaughter the animal in accordance with the tenets of their faith, Congress neither established the tenets of that faith nor interfered with the exercise of any other.⁹

This reasoning was good enough for the Supreme Court, which affirmed the decision without rendering an opinion.¹⁰

The most troublesome Constitutional challenges center around the problem mentioned at the start of this article — how Orthodoxy can be

4. Arizona, Arkansas, Connecticut, Georgia, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, New York, California, Michigan, Minnesota, Missouri, Ohio, Rhode Island, Texas, Virginia, and Wisconsin.

5. *See Annot.*, 52 A.L.R. 3d 959.

6. *Sossin Systems, Inc. v. City of Miami Beach*, 262 So. 2d 28 (Fla. 3d D.C.A. 1972).

7. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;" *U.S. Const. amend. I*.

8. 7 U.S.C. §1902.

9. *Jones v. Butz*, 374 F.Supp. 1284, 1294 (S.D.N.Y. 1974).

10. 419 U.S. 806, 95 S.Ct. 22, 42 L.Ed. 2d 36 (1974).

measured. The earliest such challenge to New York's law was made in 1918,¹¹ and seven years later the United States Supreme Court addressed the issue.¹² Opponents of the law which made it a criminal offense falsely to represent kosher meat claimed that the word "kosher" was too indefinite to form the basis of a criminal statute. The Court disagreed, stating that "the term 'kosher' has a meaning well enough defined to enable one engaged in the trade to correctly apply it, at least as a general thing."¹³

Many years later a similar attack was made on California's law in what was to be the first of many cases arising from a long-standing dispute between rival Orthodox factions. In this situation, the challenge was made to that section of California's Penal Code which prohibited the false representation of kosher food. The problem, according to the critics, centered around the statute's definition of "kosher" as "strict compliance with every Jewish law and custom" surrounding food preparation.¹⁴ Can all Rabbis agree on what these laws and customs are? Surely a criminal conviction should not depend on one Rabbi's personal opinion.

The court rejected the challenge, holding that the fears expressed were unwarranted. Certainly the law would be construed only to include those laws and customs "as are generally recognized as among the Orthodox Hebrew requirements."¹⁵ There must be, the court ruled, some common ground for agreement in this area.

Perhaps so, but over twenty years later another California court, faced with a somewhat different question, reached what appears to be a diametrically opposite conclusion.¹⁶ In this case, the owners of a kosher meat company brought a libel suit against the Rabbinical Council of California after the latter group had advertised that the store had lost its kosher certification. The trial court dismissed the suit, and the decision was affirmed by the appellate court which held that American courts can not be used for the resolution of religious controversies, and the question of whether or not the meat is kosher is one on which there can be a difference of opinion. The suit could stand, the court held, only if there was no dispute among Jewish religious authorities as to whether or not a particular food item was kosher.

Apparently the judge here understood the problem of the absence of a central Jewish authority (and perhaps had heard the joke about the two Jews stranded on a desert island who had built three synagogues). This particular question of diversification takes on additional significance

11. *People v. Atlas*, 183 App. Div. 595, 170 N.Y.S. 834 (1918).

12. *Hygrade Provision Co. v. Sherman*, 266 U.S. 497, 45 S.Ct. 141 (1925).

13. 266 U.S. 495, 502, 45 S.Ct. 141, 142.

14. Penal Code §383b.

15. *Erlich v. Municipal Court of the Beverly Hills Judicial District*, 55 Cal. 2d 553, 11 Cal. Rptr. 758, 360 P.2d 334 (1961).

16. *Korn v. Rabbinical Council of California*, 253 Cal. App. 2d 727, 195 Cal. Rptr. 910 (2d Dist. 1983).

when considered in the light of a related area of government-religious alliance, that of the official kosher meat inspector. Once again California was at the forefront of controversy.

The first case that discussed this situation was decided in 1964, when a group of *shohtim* brought suit against Rabbi Judah Glasner, who at that time occupied the position of Kosher Food Representative in California's Department of Public Health. In the "line of duty" Rabbi Glasner sent letters to all kosher markets and caterers declaring that the *shohtim* were not kosher. They, in turn, declared that they were victims of a conspiracy to defame them, and charged that Rabbi Glasner was attempting to coerce the community into accepting his particular opinions on kashrut.¹⁷

The case never received a full trial, as the judge declared that, even if Glasner were motivated solely by malice and even if the letter were, in fact, libelous, as a government official he was immune from this type of lawsuit.

The struggle hardly ended there. One year later the California courts were asked to rule on another challenge to Rabbi Glasner's authority.¹⁸ Instead of attacking his decisions, the contestants here questioned Glasner's qualifications as an Orthodox Rabbi. Their logic was as follows: since kosher establishments must always allow an Orthodox Rabbi to inspect their premises, if Glasner was ruled to be not Orthodox, then he would lose this privilege, and thus would have no way to challenge their kashrut.

Once again Glasner withstood the challenge, as the court ruled that a suit brought by private individuals attacking the credentials of civil service employees could not stand. Although the court sidestepped the main question by resorting to the governmental immunity doctrine, it did discuss the folly of an American civil court ruling on such a question:

True, if the court should decide that [Glasner] is not an ordained orthodox rabbi and appellant refuses him admission, he will have a judgment to point to if the orthodox community boycotts his establishment, but it would be no guarantee of continuing patronage.¹⁹

Still, the dead horse was beaten a few more times, now in the federal system. In 1967, a federal district court in California, in dismissing yet another challenge to Glasner, saw the myriad problems involved in such an action:

Plaintiff makes it clear that he expects this court . . . to decide who is and who is not an orthodox rabbi, what is and what is not kosher poultry, and whether plaintiff's *shohtim* were *treif*.²⁰

17. *Glickman v. Glasner*, 230 Cal. App. 2d 120, 40 Cal. Rptr. 719 (2d Dist. 1964).

18. *West Coast Poultry v. Glasner*, 231 Cal. App. 2d 747, 42 Cal. Rptr. 297 (2d Dist. 1965).

19. 42 Cal. Rptr. 297, 301.

20. *Erllich v. Glasner*, 274 F.Supp. 11, 14 (C.D. Ca. 1967); *aff'd*, 418 F.2d 226 (9th Cir. 1969).

If this were not bad enough, the court went on to note that some of the proofs to be offered were allegations that Glasner had allowed mixed seating in his congregation. This, stated the court, “hardly seems a dietary matter.”²¹

Although the California cases may be an aberration, we should pause to consider whether secular laws which aid in the preservation of kashrut are proper, or, as the old line goes, are they really “good for the Jews?” While we may appreciate the assistance of laws that preserve the purity of kosher meat, it is difficult to reconcile such laws with the general principle set down by the United States Supreme Court that a statute is invalid if it advances or inhibits religion, or if it creates “an excessive entanglement of government and religion.”²² And if we applaud the existence of such laws and the cases that uphold their validity, can we then criticize the Supreme Court when, in 1984, it allows a city government to continue to display a nativity scene, stating that the Constitution “affirmatively mandates accommodation, not merely tolerance, of all religions and forbids hostility toward any”?²³ The entanglement of government in religious questions appears much more pervasive in the kashrut laws.

In addition, are rulings about kashrut the types of questions that we really want judges to decide? When a coffee shop that serves meat and dairy entrees on the same dishes lists “kosher frankfurters and salami” on its menu does it matter whether or not a court finds it in violation of state law?²⁴ Won't it really depend on the “kosherness” of the person who chooses whether or not to eat in that establishment? When we relegate these decisions to secular courts, we take a step away from treating kashrut as a means toward helping preserve our unique identity.

Allegations concerning failure to observe kashrut have also given rise to the filing of civil suits based on claims of libel and anti-trust. Depending on the specific nature of the question, the courts have come up with two major ways of treating these cases. The first is to consider that the question is ecclesiastical, that is, that it can be answered only by reference to religious law. If that is the situation, then the court will not entertain the suit. One such California suit has already been discussed.²⁵ A similar result was reached by a Massachusetts court in 1965²⁶ when a suit was instituted by a group of kosher meat stores against the Associated Synagogues of Greater Boston, the organization that gave kosher certification to caterers. When Associated refused to accept the meat stores' certifica-

21. *Id.* These suits stopped when the State of California eliminated Glasner's job. *Glasner v. Dept. of Public Health*, 61 Cal. Rptr. 415 (2d Dist. 1967).

22. *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed. 2d 745 (1971).

23. *Lynch v. Donnelly*, 104 S.Ct. 1355, 1359 (1984).

24. It didn't. *State v. Glassman*, 109 Misc. 2d 1088, 441 N.Y.S. 2d 346 (Co. Ct. 1981).

25. Korn, *supra*. note 16.

26. *United Kosher Butchers Association v. Associated Synagogues of Greater Boston, Inc.*, 349 Mass. 595, 211 N.E. 2d 332 (1965).

tion of kashrut, sales fell off and the stores brought suit, arguing that the Association was engaging in practices banned as being against anti-trust laws.

The court refused to hear the suit. In ruling that the question was beyond the scope of their authority, it stated that

if we were to consider the charge of unlawful interference we would inevitably be faced with such questions as who has the authority to enforce kashruth in Boston, what are the criteria for determining whether foods are kosher, and what procedures must the body in charge of Kashruth follow. All of these questions are determinable only by reference to Jewish law, a domain into which the courts will not venture.²⁷

But, as the old law school maxim goes, if you change the facts, you can often change the law. Seven years later the same Massachusetts court addressed a situation where a kosher caterer brought a libel suit against a person who had circulated a letter amongst the Jewish community charging him with having been found guilty of violations of kashrut and shabbat laws.²⁸ The trial court had dismissed the suit, holding that the issue was religious in nature and, thus, beyond its jurisdiction. The appellate court reversed, and allowed the suit to continue. The central issue here was not a religious one. The question was not *had he violated* the regulations, but, rather, *had he been adjudged* guilty of such violations. This was an objective fact that could be determined just like facts in any other civil suit and, thus, it was a proper matter to be aired in the secular arena.

The California squabble provides one more example of a libel case.²⁹ It also demonstrates the depths to which this conflict reached. A kosher butcher had apparently delivered chickens to the Beverly Hilton Hotel on a Saturday afternoon. If this wasn't bad enough, rumor spread that the chickens were not kosher. As a result, the State Kosher Food Inspector charged the butcher with a violation of the State law, a charge of which the caterer was acquitted. While the suit was pending, the Defendant, who had been terminated as the caterer's supervising Rabbi, bought 1000 copies of the issue of the California Jewish Press that discussed the situation and distributed them to people as they were leaving shul. The caterer brought suit for trade libel and was awarded \$35,000 in damages. The trial court noted that there was evidence of conspiracy, since the defendant had apparently induced an unknowing employee of the caterer to violate the Sabbath while making his delivery. Unfortunately, the damage award did not survive³⁰ because, although the caterer had been defamed, he failed to present evidence of actual monetary loss.

Within the last ten years, five federal courts have addressed the ques-

27. 211 N.E. 2s 332, 335.

28. Gorodetzer v. Kraft, 360 Mass. 743, 277 N.E. 2d 685 (1972).

29. Erlich v. Etner, 224 Cal. App. 2d 69, 36 Cal. Rptr. 256 (2d Dist. 1964).

30. *Rev'd.*, 47 Cal. Rptr. 473, 407 P.2d 649 (1965).

tion of how far penal institutions must go to provide suitable kosher food for Orthodox inmates. The answers have not been consistent, but a trend appears to be emerging in their favor.

A decision out of the Southern District of New York³¹ opted on the side of the prison, pointing out two factors. One, the much higher cost, was negated by the fact that the inmate was willing to pay for the difference.³² The bigger problem, the court stated, was the fact that kosher food was of a higher quality, and this inmate's preferred treatment would be detrimental to prison discipline. Since the prison's action in denying the inmate's request for kosher food was not clearly questionable, his complaint was denied.

In that same year, another New York court ruled differently in a case involving Rabbi Kahane.³³ Despite the other court's fear of jealousy, this one felt that "the repetitive and spartan nature of such a diet under prison conditions would undoubtedly discourage those who are not sincere."³⁴ There was no question that Kahane was a meticulous observer of Jewish dietary laws and, since the government here had total control over his life, it would be, in the court's words, cruel and unusual punishment to deprive him of the right to observe this basic religious practice.

The court then touched on a crucial theological question, that of the separation of ritual practice from the other tenets of leading a good Jewish life. Rabbi Donin has stated that

the laws of Kashruth do not stand isolated from the purpose and goals, from the disciplines and demands that are part of the total picture of Judaism. To treat Kashruth in isolation is to distort and misunderstand it.³⁵

Contrast this with the court's statement that "however misguided and violent his past activities, the defendant is a religious person, an observant Orthodox Rabbi."³⁶ This separation of ritual from substance, while working in Kahane's favor, is disturbing, for it brings up a problem alluded to at the outset of this article — the fact that kashruth provides a measurable standard of "Jewishness" while the overall objectives cannot be so easily calculated and may, indeed, be solely in the eyes of the beholder.

This feeling was adopted by a New York court in a case also decided in the same year.³⁷ While rejecting an inmate's request for kosher food on technical grounds, the court stated that it was persuaded by the testimony

31. *U.S. v. Huss*, 394 F.Supp. 752 (S.D.N.Y. 1975).

32. On a related note, see *Stark v. Wyman*, 59 Misc. 2d 504, 299 N.Y.S. 2d 686 (Sup. Ct. 1969) where the court denied a request for an increase in a welfare food allowance in order to pay for kosher food.

33. *U.S. v. Kahane*, 396 F.Supp. 687 (E.D.N.Y. 1975).

34. *Id.*, 703.

35. Donin, *supra* note 2, at 100.

36. 396 F.Supp. 687, 703.

37. *U.S. v. Shlian*, 396 F.Supp. 1204 (E.D.N.Y. 1975).

of a Rabbi that the purpose of the dietary laws was to impose discipline on the individual observer. It then went on to state that

there is no formal penalty for nonobservance of the Jewish dietary laws. Non-compliance is said to affect the moral and spiritual character of the individual which ultimately determines his well being and salvation. It must be borne in mind, however, that the initial non-compliance with the rules pertaining to the defendant's responsibility to his fellow-men was that of the defendant himself in failing to observe the laws of the land.³⁸

Parenthetically, a Connecticut court took this approach when it denied relief to an Orthodox inmate who complained that he had insufficient time to recite the *amidah* in the morning. Noting that the inmate was in jail for defrauding Jewish charities, the court held that "to find a good-faith religious belief in this case would be to reduce that element of the First Amendment to insignificance."³⁹

While on the subject of measuring relative Orthodoxy, we come to two cases, concerning incarcerated Satmar Hassidim, that demonstrate how, often, the non-Jewish community is more respectful of Jewish customs than are other members of the faith.

In 1980 a Satmar inmate of the Allenwood prison complained that the facility had not provided him with the proper food for Passover.⁴⁰ The prison had a Jewish population of 40, and the court detailed how the prison had gone to great lengths in preparing the kitchen, which was voted to be satisfactory by the thirty-nine other Jewish inmates. While noting that this inmate's demands were "inconsistent with his status as a prisoner,"⁴¹ the court observed that he would probably not eat during that week, and, thus, could put his life in jeopardy. Therefore, the court concluded, he should be allowed to have his own cooking element in the prison.

A similar case arose three years later when another Satmar inmate claimed that the food which was provided for him was not kosher enough.⁴² The prison contended that it was providing food that was acceptable to most Orthodox Jews, and that it had met its obligations. The inmate would eat food approved only by the Central Rabbinical Congress. The court held that this was not an unreasonable request. His right to exercise his religion freely "is in no way diminished by the fact that his faith requires that he not eat certain food that is acceptable to most Orthodox Jews."⁴³ The prison had to provide him with C.R.C. food, which was bought with financial contributions from the Hasidic community.

It is an oft-heard lament of Jewish people today that the celebration

38. *Id.* at 1206.

39. *Ron v. Lennane*, 445 F.Supp. 98, 100 (D.Conn. 1977).

40. *Schlesinger v. Carlson*, 489 F.Supp. 612 (M.D. Pa. 1980).

41. *Id.* at 617.

42. *Prushinowski v. Hambrick*, 570 F.Supp. 863 (E.D.N.C. 1983).

43. *Id.* at 868.

surrounding a Bar Mitzvah has taken a dominant position over the religious service. When a Florida court solved a zoning dispute in 1975, it highlighted what perhaps is a forgotten fact — that the feast itself is a religious requirement.⁴⁴

The Somersteins were engaged in the business of kosher catering on the premises of Miami Beach's Temple Emmanu-El. The city had tried to stop their operation, claiming that they were conducting a commercial enterprise in an area not zoned for such activity. After a preliminary skirmish, an order was entered allowing them to cater at the Temple only when the function involved was Temple-initiated. Two weeks after this order was entered, the city asked that the Somersteins be held in contempt for catering a meal at the Temple in celebration of a Bar Mitzvah that had not been conducted there.

The trial judge agreed and entered a contempt order. This decision was reversed by the appeals court, noting that Jewish law and tradition require that a "feast of merit" be held following an event such as a Bar Mitzvah. Therefore, the caterers were not merely performing a business function, but were also engaged in "religious functions in themselves carried out under the auspices of Temple Emmanu-El."⁴⁵ Even though the bar mitzvah itself was not on the premises, it nevertheless was a Temple-initiated function, and thus the dinner was also proper and within the scope of the judge's original order.

But failure to follow kashrut, while important to one Ohio man was nor significant enough to provide a basis for him to end his marriage.⁴⁶ Among the grounds he raised in his divorce petition was the claim that his wife's refusal to keep a kosher home was a gross neglect of duty entitling him to be granted the divorce. The court observed that the wife's family had never kept kosher, and also made reference to her mother's statements that keeping kosher was both ridiculous and expensive. While it might have helped keep the marriage together if the wife had kept kosher, the fact that there is a divergence among the followers of Judaism as to the importance of this tradition made her non-observance something other than gross neglect of duty.

While it is not always possible, and is usually dangerous, to draw conclusions from a small sample of cases from different jurisdictions, some tentative statements can be made. One is that the difference of opinions among the branches of Judaism, and even among the varying Orthodox sects, can be a source of great difficulty when secular courts must rule on Jewish issues.⁴⁷ Such divergence helps throw these questions into the

44. *Somerstein v. City of Miami Beach*, 319 So. 2d. 158 (Fla. 3d D.C.A. 1975); *cert. den.*, 338 So. 2d 841 (Fla. 1976).

45. 319 So. 2d 158, 162.

46. *Glimcher v. Glimcher*, 29 Ohio App. 2d 55, 278 N.E. 2d 37 (1971).

47. This diversity causes problems in other areas as well. See, e.g., *Solomon v. Congregation Tiffereth Israel of Revere*, 344 Mass. 755, 183 N.E. 2d 492 (1962) (suit to enjoin mixed seat-

realm of ecclesiastical problems, and gives the courts a way to duck many such issues. This may be good, however, as it is a very important example that proves a larger lesson — that the government should not interfere with religion. The folly of such decisions can be demonstrated by some of those mentioned previously.

A second observation is more disturbing. While the laws of kashrut may have been designed to set us apart, they have also served to alienate us from one another. A few of the cases discussed have shown some of the depths that have been reached in trying to “out-kosher” a foe, practices which suggest that the true meaning of kashrut, as a “diet for the soul,”⁴⁸ has been forgotten. When ritual takes precedence over morality, when form takes place over substance, our very existence is threatened.

Two thoughts come to mind as possible remedies. First, our religious leaders need to stress not just the “whats,” but, more importantly, the “whys” of ritual practices. Second, we must become more willing to set up mechanisms to resolve our internal disputes among ourselves. Not only might this help bring more reasoned and acceptable solutions, but it will also put us in a better moral position when we challenge the intrusion of government into religion, and religion into government.

ing); *Tamarkin v. Children of Israel*, 2 Ohio App. 2d 60, 206 N.E. 2d 412 (1965) (disinterment from Orthodox to Reform cemetery).

48. Donin, *supra*. note 2.

Lies, Wives and Sisters: The Wife-Sister Motif Revisited

DANIEL H. GORDIS

HISTORICAL-CRITICAL BIBLICAL SCHOLARSHIP during the past one hundred years generally built upon the acceptance of the documentary hypothesis of the Pentateuch. Simply stated, the documentary hypothesis is the term given to the school of thought that claims that the Torah in its present form is a composite document, representing materials originally compiled from separate sources. Many of the logical inconsistencies in some parts of the Biblical text and stylistic differences between various sections can be easily explained, the proponents of this thesis claim, by viewing the text as an amalgam of originally distinct literary works. Though some disagreement exists as to which sections of the Torah originated with which tradition and as to how these various traditions were ultimately united, most scholars refer to a limited number of major traditions. They are the J (Jahwist) and E (Elohist) traditions, the names of which stem from their usual forms of reference to God, D the tradition of the Book of Deuteronomy, H the Holiness Code, now imbedded in Leviticus and the P (Priestly) tradition, which is seen as primarily responsible for the Levitical cult. It was a redactor (often called R) who compiled these sources into the text of Torah which we now use and study.

In the last few decades, the documentary hypothesis has lost much of its central position, not because it has been disproved or refuted or replaced by a more comprehensive theory, but, primarily, because the focus of Biblical scholarship has shifted. In the past, the emphasis was upon analysis of the elements which entered into the final text. In recent years, scholars have recognized that it is the synthesis of these elements and the final product that emerged, the Torah, that ought to be the focus of critical attention. An emphasis on the final form of the texts is reflected in the varied works of Cassuto, Brevard Childs (as in his *Introduction to the Bible as Scripture*), Frye and Alter, among others. Even if it is granted that individual sources have entered into the composition of the Torah, these scholars today recognize that it is the final form which deserves to be carefully analyzed.

A case in point is the series of Biblical incidents known as the "wife/

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sister motif." The Torah relates three instances in which one of the Patriarchs seeks to avert a perceived danger to himself by depicting his wife as his sister. Three such episodes in the space of fifteen chapters of a single Biblical book beg for discussion. In fact, much scholarly and interpretive energy has been devoted to analyses of these narratives, and in the pages that follow I would like to examine them, briefly discussing the manner in which they have thus far been incorporated into Biblical scholarship¹ and suggesting yet an additional means of reading and interpreting them.

The plots of the three narratives are all similar. In the first one (henceforth, narrative I), found in Genesis 12:10-20, Abram² journeys to Egypt in order to avoid a famine. There, because he fears that his wife's beauty will endanger his life, he seeks to convince Pharaoh that Sarai is his sister. Pharaoh, not suspecting his interference in a marital relationship, takes Sarai into his court until he learns the truth about her relationship to Abram. In narrative II (20:1-18), Abraham and Sarah (their names having been changed in the interim) settle in Gerar, where Abimelech is the ruler. Although the Torah does not offer a motive for the lie in this instance, Abraham once again tells the king that Sarah is his sister, whereupon Abimelech takes her until he discovers that he has been misled. Genesis 26:1 and 6-11,³ narrative III, relates a similar event, dealing once again with Abimelech, though in this case the protagonists are not Abraham and Sarah, but Isaac and Rebekah.

In his classic work on Genesis, E.A. Speiser claims that the repetition of this plot provides sound support for the documentary hypothesis.⁴ The three instances taken together, he argues, present the reader with serious contradictions. It would appear that Abram learned little from his almost disastrous lie to Pharaoh, and tried again with Abimelech only a short time later. One would also have to believe that Abimelech, who

1. For one almost "midrashic" approach to these texts, see also Joel Rosenberg, "The 'Wife-Sister' Legends of Genesis and the Role of Women," *Davka Magazine*, Number 17 (1976). Another recent analysis of this series of narratives may be found in Ruth F. Brin, "Abraham as Diplomat: Reconsidering the Wife-Sister Motif," *Reconstructionist Magazine* (October-November, 1984), 33-34.

2. With the exception of the names of Biblical characters, all transliterations in this paper follow the system of the *Encyclopedia Judaica* (Jerusalem: Keter Publishing House Jerusalem, Ltd., 1972), Vol. 1, pp. 90-91. Names of Biblical characters appear in the commonly anglicized forms.

3. Several sources, among them the *Encyclopedia Judaica* (Vol. VII, p. 390), suggest a division which would include only 26:6-11. However, Robert Alter, in his *The Art of Biblical Narrative* (New York: Basic Books, Inc., 1981), p. 49, proposes including verses 1-11. While verses 26:2-5 do not represent an integral part of the wife/sister narrative, our description of the structure of these narratives, (p. 3) will suggest that at least 26:1 must be included.

4. E.A. Speiser, *The Anchor Bible: Genesis* (New York: Doubleday & Company, Inc., 1964), pp. xxii-xxxvi, 89-94, 147-152 and 198-204. See, also, the relevant discussion in W. Gunther Plaut, ed., *The Torah: A Commentary* (New York: Union of American Hebrew Congregations, 1981).

appears in both narratives II and III, is so little nonplussed by the first incident that he readily believes Isaac's lie as well several chapters later. "No competent writer," Speiser concludes, "would be guilty of such glaring faults in characterization."⁵

Based on this assumption, and given the general characteristics of the E and J documents, Speiser and other advocates of the documentary hypothesis attribute narratives I and III to J, and narrative II to E. This way, neither tradition contains contradictions. Document E, containing only one of the narratives, poses no problems. Document J, even with two, proves defensible because one deals with Abraham and Pharaoh in Egypt, while the other focuses on Isaac and Abimelech in Gerar. Such a division, Speiser argues, also seems entirely consistent with the general qualities of the E and J documents.⁶

While Speiser's claim that the duplication of events here probably stems from the text's origin in distinct documents seems well founded, it has long been recognized that more may be said regarding the narratives at hand. Speiser himself noted that these sources prove interesting not only textually but historically and sociologically as well. Specifically, he suggested that the "wife/sister" motif reflects an ancient Hurrian practice, in which a man could "adopt" his future wife as a "sister" in order to grant her a higher social status.⁷

Hermann Gunkel (1862-1932), who explored categories of literary forms, provided an additional useful tool in the discussion of these texts. He proposed the classification of Biblical narratives according to the "type-scene" that they represent. "Type-scenes," he suggested, are those narratives in the Bible which exhibit striking similarity to each other, though specific characters and details may vary. Examples of such "type-scenes" are numerous and include, among others, the birth of a hero to a previously barren mother, encounters with a future spouse at a well, trials of initiation, epiphany in a field and the testament of a dying hero.⁸ Although Gunkel makes a vague reference to the wife/sister motif in his *Legends of Genesis*, he does not describe it in any detail.⁹

While the three narratives in question do not fulfill all of Gunkel's criteria for a "type-scene," they surely do support the following general structure:¹⁰

5. Speiser, p. xxxii.

6. As suggested above, document E employs the name Elohim, rather than Yahweh, for God. (Speiser notes the reading of the Septuagint for 20:18 which renders Elohim instead of Yahweh, supporting his division of the texts.) E also uses dreams as a means of communication and it has a "marked tendency to explain and justify (p. 150)." J, on the other hand, is marked by an economy of speech and an ability to present actions without the need for interpretation (p. 152).

7. See, especially, "The Wife-Sister Motif in the Patriarchal Narratives," in A. Altmann, ed., *Biblical and Other Studies* (Cambridge, Mass.: Harvard University Press, 1963), pp. 15-28.

8. Alter, p. 51.

9. Hermann Gunkel, *Legends of Genesis* (New York: Schocken Books, 1901), p. 99.

1. An introduction (usually a single verse) explains how the characters arrived at their foreign location.

2. The Patriarch claims that his wife is actually his sister. When applicable, the ruler then takes the wife into his quarters.

3. The ruler somehow learns the truth about the wife's relationship to the Patriarch.

4. The ruler confronts the deceiving Patriarch and, depending on the instance, the Patriarch may offer an explanation.

5. The conflict is resolved.

The texts of the three narratives, presented so as to facilitate comparison of each of the five stages among the three instances, now follow:¹¹

NARRATIVE I	NARRATIVE II	NARRATIVE III
There was a famine in the land, and Abram went down to Egypt to sojourn there, for the famine was severe in the land. (12:10)	Abraham journeyed from there to the region of the Negeb and settled between Kadesh and Shur. While he was sojourning in Gerar, (20:1)	There was a famine in the land — aside from the previous famine that had occurred in the days of Abraham — and Isaac went to Abimelech, king of the Philistines, in Gerar . . . So Isaac stayed in Gerar. (20:1,6)
As he was about to enter Egypt, he said to his wife Sarai, "I know what a beautiful woman you are. If the Egyptians see you, and think, 'she is his wife,' they will kill me and let you live. Please say that you are my sister, that it may go well with me because of you, and that I may remain alive thanks to you." (12:11-13)	Abraham said of Sarah his wife, "She is my sister." So Abimelech king of Gerar had Sarah brought to him. (20:2)	When the men of the place asked him about his wife, he said, "She is my sister," for he was afraid to say "my wife," thinking, "The men of the place might kill me on account of Rebekah, for she is beautiful." (26:7)

10. The following represents nothing but a general paradigm. As we shall see, each of the sections obtains its particular significance precisely because it deviates from the rule in some way.

11. The text which follows is taken in its entirety from *The Torah: A New Translation* (Philadelphia: Jewish Publication Society of America, 1962).

NARRATIVE I

When Abram entered Egypt, the Egyptians saw how very beautiful the woman was. Pharaoh's courtiers saw her and praised her to Pharaoh, and the woman was taken into Pharaoh's palace. And because of her, it went well with Abram; he acquired sheep, oxen, asses, male and female slaves, she-asses, and camels.

But the Lord afflicted Pharaoh and his household with mighty plagues on account of Sarai, the wife of Abram.

(12:14-17)

NARRATIVE II

But God came to Abimelech in a dream by night and said to him, "You are to die because of the woman that you have taken, for she is a married woman." Now Abimelech had not approached her. He said, "Oh, Lord, will You slay people even though innocent? He himself said to me, 'She is my sister!' And she also said, 'He is my brother.' When I did this, my heart was blameless and my hands were clean." And God said to him in the dream, "I knew that you did this with a blameless heart, and so I kept you from sinning against Me. That is why I did not let you touch her. Therefore, restore the man's wife — since he is a prophet, he will intercede for you — to save your life. If you fail to restore her, know that you shall die, you and all that are yours."

Early next morning, Abimelech called all his servants and told them all that had happened; and the men were greatly frightened.

(20:3-8)

NARRATIVE III

When some time had passed, Abimelech king of the Philistines, looking out of the window, saw Isaac fondling his wife Rebekah.

(26:8)

NARRATIVE I

Pharaoh sent for Abram and said, "What is this you have done to me! Why did you not tell me she was your wife? Why did you say, 'She is my sister,' so that I took her as my wife? Now, here is your wife; take her and begone!"

(12:18-19)

NARRATIVE II

Then Abimelech summoned Abraham and said to him, "What have you done to us? What wrong have I done you that you should bring so great a guilt upon me and my kingdom? You have done to me things that ought not to be done. What, then," Abimelech demanded of Abraham, "was your purpose in doing this thing?" "I thought," said Abraham, "surely there is no fear of God in this place, and they will kill me because of my wife. So when God made me wander from my father's house, I said to her, 'Let this be the kindness that you shall do me: whatever place we come to, say there of me: 'He is my brother.'"

(20:9-13)

NARRATIVE III

Abimelech sent for Isaac and said, "So she is your wife! Why did you then say: 'She is my sister?'" Isaac said to him, "Because I thought I might lose my life on account of her." Abimelech said, "What have you done to us! One of the people might have lain with your wife, and you would have brought guilt upon us."

(26:9-10)

NARRATIVE I

And Pharaoh put men in charge of him, and they sent him off with his wife and all that he possessed.
(12:20)

NARRATIVE II

Abimelech took sheep and oxen, and male and female slaves, and gave them to Abraham; and he restored his wife Sarah to him. And Abimelech said, "Here, my land is before you; settle wherever you please." And to Sarah he said, "I herewith give your brother a thousand pieces of silver; this will serve you as vindication before all who are with you, and you are cleared before everyone." Abraham then prayed to God, and God healed Abimelech and his wife and his slave girls, so that they bore children; for the Lord had closed fast every womb of the household of Abimelech because of Sarah, the wife of Abraham.

(20:14-18)

NARRATIVE III

Abimelech then charged all the people saying, "Anyone who molests this man or his wife shall be put to death."

(26:11)

Clearly, each of the three instances at hand conforms to our described outline. However, as Robert Alter suggests,¹² such a simple characterization may actually miss the essential points of the texts. For what is important may be not the manner in which these instances are similar to each other, but rather, the way in which each deviates from our abstract scenario, thereby conveying its specific message about the characters or issue at hand. The remainder of this paper consists of a "close-reading" analysis of these three narratives, and seeks to demonstrate that their affinity to the "type-scene" notwithstanding, each has been painstakingly constructed so as to highlight a specific issue with which the Biblical author is concerned.

Careful literary analysis of each of the three instances of the wife/sister motif illustrates that, in each, the author had a particular theme in mind. Our examination of the details of these three narratives will demonstrate that, in narrative I, the author seeks to display the rather human, darker

12. Alter, chapter 3.

side of Abram's personality. Almost each element of the section is carefully designed to highlight his guile and the absence of any legitimate explanation or defense for his actions. Narrative II, however, centers on a moral issue, paralleling in many senses the story of the destruction of Sodom.¹³ At play here are the notions of the complexity and subtlety of moral judgments, along with issues of fairness in punishment and Divine justice.¹⁴ Finally, the third narrative furthers Genesis' portrayal of Isaac as a weak and passive personality, overshadowed consistently by the imposing characters of his father and his brother.¹⁵

Stage One: The Introduction

The introductory portions of the narratives (12:10, 20:1, 26:1,6) serve primarily to define the beginning of each incident. No one of them is particularly important in explicating the special interest of the narrator in that narrative. Nonetheless, it is interesting that in both the first and second instances, the redactor employs verbs of motion. Narrative I uses the verb *va-yered* (to descend) to indicate Abram's travel, while narrative II begins with the verb *va-yissa* (to travel). Narrative III, however, begins with a highlighting of Isaac's weakness at the very outset. The main body of the narrative, which begins with 26:6, tellingly begins not with a verb

13. That incident, like narrative II, raises the issue of God's innocence. Abimelech's question, "Oh, Lord, will You slay people even though innocent?" recalls Abraham's well known question and subsequent bargaining with God after learning of His intention to destroy Sodom.

14. That scholars generally assign the Sodom incident to the J document does not seem to me to detract from the plausibility of this argument. On the contrary, it seems almost likely that J and E could each contain one such confrontation.

15. It is a generally accepted reading of the Biblical text that Isaac was the most passive of the three Patriarchs. However, it should be noted that the Genesis record of his personality is by no means black and white. Abimelech's seeking a pact of non-aggression (Genesis 26:28-31) surely suggests that Isaac represented a considerable power. The following rather lengthy quotation from *The Torah: Genesis: A Modern Commentary* (New York: Union of American Hebrew Congregations, 1974, p. 261), does, however, reflect a psychological explanation of this pervasive view of Isaac's character:

Of the three Patriarchs, Isaac's personality is the least clearly defined. Much in his life is a repetition of Abraham's experience, and some critics have even suggested that Isaac never existed at all, that he was the creation of later legendary amplifications of the Abraham cycle. But [this] is rather unlikely . . .

He was the child of his parent's old age and was probably overprotected in his youth. Sarah was a woman of strong will, Abraham a man of deep conviction and great status who must have appeared as a towering giant to his son. It is not surprising that when Isaac was being offered as a sacrifice at Moriah he could not even raise his voice in protest. By coincidence . . . the wife who was obtained for him turned out to be aggressive and resourceful. . . . The text is at pains to point out that Rebekah brought Isaac "comfort after his mother's death (Gen. 24:67), which in contemporary terms may be said to indicate that he saw in Rebekah a mother substitute. Further, he repeated his father's experience with Abimelech, and the wells he dug were the old wells of Abraham.

Bad experiences seem to have followed him. He was nearly sacrificed by his father; he was caught in the crossfire of Sarah's and Hagar's jealousies; his children did not get along with each other; and, in old age, when he was stricken with blindness, his wife and son conspired to deceive him, so that the one thing he truly owned, his paternal blessing, was bestowed equivocally on the son he did not prefer.

which connotes movement (and, therefore, in a sense, power) but with the verb *va-yeshuv*, which refers to fixed dwelling in the same locale.

Until now, we have discussed narrative III assuming that it begins with 26:6. However, an interesting detail comes to light when we add 26:1 to the section. When one includes auxilliary verse 26:1 (which seems necessary, given the structure outlined above), it becomes apparent that this is the only narrative in which God is involved in the Patriarch's decision to move to a new locale. In the other two narratives, the Patriarch makes his own determination of where to reside. Here, it is God who insists that Isaac remain in Gerar. And yet, as we shall see, despite God's explicit promise that He will protect Isaac (26:3), Isaac still manages to endanger himself and his family. By virtue of this detail in the opening verse(s), the narrative suggests from the very outset that Isaac is incapable of competent, independent thinking.

Stage Two: The False Claim

The second stage of the "type-scene" (12:11-13, 20:2, 26:7), that in which the Patriarch makes the claim that his wife is really his sister, proves much more complicated. The indefensible character of Abram's behavior is highlighted by comparison with the other two parallel sections. In those, the claim that the wife is actually a sister is made only once the Patriarch has arrived at the new place (narrative II), or in reaction to specific queries by the local inhabitants (narrative III). However, in narrative I, Abram's lie is premeditated. As Harry Orlinsky points out in his notes to the JPS translation of the Torah,¹⁶ *hikriv lavo* (12:11) refers not to place but to time.¹⁷ The text stresses not their proximity to Egypt, but the short amount of time left for their travel. In so doing, it points out that they have yet to arrive. Therefore, Abram's mendacity is completely premeditated, in no way prompted by factors related to the Egyptians.

In the second narrative, Abraham says that Sarah is his sister, again without apparent provocation. But there are two essential differences which, when carefully noted, further the negative portrayal of narrative I. In narrative II, the claim is not as premeditated, since Abraham has already arrived at Gerar. Furthermore, the ruler's "abduction" of Sarah is almost immediate, unlike the first case, in which the reports of her beauty apparently took some time to reach Pharaoh. The immediacy of the

16. Harry M. Orlinsky, ed., *Notes on the New Translation of the Torah* (Philadelphia: Jewish Publication Society, 1969), p. 85.

17. Details such as this point to the absolute importance of working from the original text. In this particular instance, even a translation as fine as Everett Fox' proves less ideal, for his rendition of *hikriv la-vo* as "came near" does not capture the subtle effect to which Orlinsky refers. See Everett Fox, *In the Beginning: A New English Rendition of the Book of Genesis* (New York: Schocken Books, 1983), p. 49.

abduction¹⁸ suggests that Abraham may well have been given legitimate cause for worry, and may have lied out of what he considered a dire necessity. Surely, it suggests that he had less time to prepare a better response to this state of affairs. This fear and the sense of a dire necessity, of course, form the basis of his defense after his confrontation with Abimelech (20:11).

Finally, the third narrative is the only one in which the Patriarch makes the wife/sister claim only after a specific inquiry. Isaac, apparently in at least some danger (Abimelech himself later admits that someone might well have taken Rebekah), fails to protect himself by devising the subterfuge in advance, making the necessary claim only when the suggestion of danger is already upon him. The fact highlights the thrust of two of the narratives. It suggests the political naivete which characterizes the third narrative's portrayal of Isaac and it directs our attention, once again, to the contrastingly premeditated nature of Abram's subterfuge in narrative I.¹⁹

Stage Three: The Truth is Revealed

In the third stage of the "type-scene" (12:14-17, 20:3-8, 26:8), in which the ruler finally learns that the woman in question is the Patriarch's wife, and not his sister, the redactor furthers the themes already developed in each of the selections. In narrative I, Pharaoh suffers "great inflictions," but nowhere does anyone tell him that it is his involvement with Sarai which has caused his punishment. Nahmanides,²⁰ sensitive to

18. Unlike the situation in narrative I, we find here no intermediary. Here, the action is all part of one verse, and *va-yishlah va-yikah* (he sent and he took) imply to me immediacy and intent.

19. Additional insight into the differences between the narratives may be gleaned from the occurrences of the verbs *yarah* and *ra'ah* in each. The brilliance of the redactor's use of these verbs stems from the fact that the third person plurals of these verbs are indistinguishable, while other forms also sound and look alike.

Let us begin with narrative II. In that case, these verbs appear twice (20:8 and 20:11). Both instances are from the root *yarah*, to fear, both refer to fear of God, and both refer to the local inhabitants' fear. As we shall have occasion to note again, this section explores, among other matters, the notions of the fear of God and just Divine retribution. In narrative III, the verbs appear only once, again in the root of *yarah*. Yet there (26:7), it is Isaac who fears, fully in accord with the thrust of that narrative. In narrative I, however, such verbs appear three times, all notably from the other root *ra'ah* (12:12, 14 and 15). The redactor's intent seems to me unambiguous. In narratives II and III, fear was legitimate, so the root *yarah*, to fear, appears. The verb *ra'ah*, to see, does not. In the first narrative, however, there was really no legitimate cause for fear, at least at the point of Abram's decision. All the fear was in the eye of the beholder; he saw cause when there might well have been none. The redactor purposely includes the notion of fear in the other two narratives, then pointedly omits it here, by using verbs which look similar but mean something very different. The intent is clear; given his specific circumstances (i.e., the fact that he has not yet even arrived in Egypt), the premeditated nature of Abram's lie cannot be justified.

20. See his commentary to 12:18, s.v. *va-yikra Par'oh le-Avram*.

the issue, specifically notes that Pharaoh could have drawn this conclusion only by the use of his own logic. Although God creates the infliction, Pharaoh never actually learns that the plague is Divine in origin. His intuition that the plague must have been caused by God, that it must stem from the fact that Sarai is Abram's wife, and his horror at what he has done all point to a sharp contrast with Abram's morality. Pharaoh's ignorance of the origin of his suffering highlights his innocence, while Abram's having created the lie himself points to the self-serving nature of his act and, therefore, in a sense, his guilt. Ultimately, it is Abram who has brought all this suffering on Pharaoh.

The text further hints at the darker side of Abram's character by noting that the Patriarch profited from his lie in the form of sheep, oxen, asses, servants and camels (12:16). While a similar list of gifts also appears in narrative II, it is crucial that, there, the gifts are given at the end of the incident, as Abimelech seeks to "clear the slate" once and for all. Here, however, the gifts appear towards the opening of the narrative. The redactor even uses the subtle tool of the placement of the list of gifts to stress that Abram also acquired great wealth as a direct result of his lie.

While narrative I, in order to highlight Pharaoh's innocence, points out that the ruler had to discern for himself the reason for the plague in his household, matters are different in narrative II. There, Abimelech has no need to divine the origin of his household's barrenness. God explicitly informs him of the reason in a dream. Here, too, the innocence of the ruler remains undisputed. In this instance, that is accomplished by verse 20:4, through the text's brilliant use of the verb *karav*, to approach. While we are explicitly told that Abimelech did not approach Sarah sexually (*karav*), the text's use of the same verb with regard to Abram in 12:11 (*hikriv la-vo*) points subtly to both Abram's manipulative deception in narrative I and Abimelech's (relative) innocence in narrative II. Given this innocence, the discussion of God's "sense of ethics" is all the more powerful. Why should Abimelech, much less anyone else in his community, be punished? The discussion is reminiscent of Abraham's argument with God regarding Sodom (cf. 18:25).²¹ Abimelech's question, "O Lord, will You slay people even though innocent?" reminds the reader of Abraham's response regarding Sodom, "Far be it from You! Shall not the Judge of all the earth deal justly?" In both of these cases, a bargaining with God ultimately takes place. Here, God refuses to absolve Abimelech from guilt completely, but agrees to have Abraham, a "prophet," pray for the recuperation of the king's household.

We have already suggested that the text's use of the verb *karav* offsets Abimelech's relative innocence with Abram's manipulation. It also bears mention that while the narrative of version II clearly states that Abime-

21. Fox' translation, "a nation," seems preferable to JPS' "people." Somehow, it seems to reflect the concern expressed in Avimelech's addressing his servants.

lech did not have sexual intercourse (*karav*) with Sarai, narrative I makes no comparable statement regarding Pharaoh. On the contrary, the text leaves the reader with every reason to suspect that Pharaoh did have sexual intercourse with Sarai. Rashi's specific claim that the plague with which Pharaoh was smitten was one which made sexual intercourse difficult suggests that he was sensitive to this very same implication.²² The use of *karav* in narrative II, then, points also to the sinful results of Abram's self interest in narrative I; it suggests that ultimately, Abram, and not Pharaoh, is responsible for his wife's illicit sexual experience.

Finally, narrative III once again points to Isaac's weakness and inability to care for himself. In the two instances with Abraham, it is God who reveals the truth about Sarah, thereby causing the king to confront the Patriarch. In the first instance, God causes Pharaoh's affliction, while, in the second, He plainly reveals Himself to Abimelech in a dream. However, the redactor has carefully constructed this narrative so that in the third and final instance of the motif, it is none other than Isaac himself who destroys his own cover. Abimelech looks out of his window and sees Isaac "laughing-and-loving"²³ with Rebekah. Isaac feels sufficiently endangered to compose the subterfuge, but lacks the competence to protect his own cover.

Stage Four: The Confrontation

The fourth stage of this "type-scene" makes it even clearer that the Biblical redactor purposely constructed these narratives so as to beg comparison. The similarities between the various incidents in this stage result not only from their narrative content, in which the irate ruler confronts the Patriarch and demands an explanation for the misrepresentation, but also from a particular linguistic style. Each of these relatively brief sections (12:18-19, 20:9-13, 26:9-10) contains the form "*va-yikra* (the ruler) *le-* (the Patriarch) *va-yomar* (translation: and (the ruler) called to (the Patriarch) and said)."²⁴ The almost identical repetition cannot be accidental; it serves to illustrate the similarities and, therefore, to highlight the differences, as well, in the various forms of the incident.

The conversations between the respective rulers and Patriarchs also further the thematic aims of the redactor. Only in narrative I does the Patriarch make no response. Abram all but admits his wrongdoing by his absolute inability to explain his actions. His silence is the redactor's most powerful means of indicating guilt. Admitting the guilt would have at

22. See his commentary to 12:17, s.v. *va-yenaga*.

23. As translated in Fox, p. 102.

24. This phrase is followed by another which is also almost identical in each of the three narratives. In this question, the ruler asks, "what have you done to me/us?" always using some form of *mah* (what) and the verb *asilah* (have you done). In narratives I and II the section begins with this phrase, while, in the third, it appears towards the end.

least suggested contrition. The Biblical text therefore carefully notes that even an admission is conspicuously absent. Narrative II, however, presents a lengthy discussion between the two personalities involved. As has been the case so far, their arguments develop the issues of justice and appropriate punishment. Abimelech stresses his own innocence, his lack of “deed,” by using the root *‘asa* [to do] no less than five times in his confrontation with Abraham. The appearance of the phrase “what have you done” (discussed above) marked the only appearances of the verb *‘asa* in narratives I and III. Therefore, the appearance of an additional four instances in the space of a few verses clearly represents an intentional statement on the part of the narrator: the issue at hand is “deeds” and, specifically, the appropriate punishment for those deeds. Abimelech’s accusation, “Deeds which are not to be done you have done to me,”²⁵ highlights his feeling that God has wronged him in punishing him so severely. It furthers the narrator’s attempt at focusing the reader on the issue of the justice of God’s punishment.

Unlike the Abram of narrative I, Abraham of narrative II does not prove speechless. In fact, the entire point of the section is that such ethical issues are not black and white, and Abraham has a defense to offer. He claims both that Sarah is, in some technical respects, his sister (thereby legitimizing the misrepresentation) and that his assessment of the nature of Gerar suggested to him that he might, in fact, have been in danger. His expression of the latter concern in the form that “Surely there is no fear of God in this place”²⁶ ironically points to Abimelech’s frustration that God is to be feared precisely because His punishments do not seem to correspond to the transgression, furthering once again the redactor’s interest in, among other issues, the apparent randomness of Divine retribution.

The third narrative highlights Isaac’s ineptitude once again with the fact that Abimelech does not accept his feeble response. Just as we noted that Abram’s inability to respond in narrative I was significant, so it is of import that in neither narrative I nor II did the ruler say anything after the initial accusation. In both instances, the narrative proceeds directly to the fifth stage, in the first instance, immediately because Abram makes no response and, in the second, right after Abraham concludes his defense. Here, however, Isaac remains on the defensive still longer, as Abimelech accuses him once again, suggesting that his defense has failed. The logical, powerful defense which Abraham offers in narrative II (which tellingly also contains a counter-accusation about the nature of the populace of Gerar) points to the pitifulness of Isaac’s statement, “Because I thought I might lose my life on account of her,” a statement which amounts to little more than “I was afraid.” The text makes further allu-

25. Fox, p. 75.

26. Fox, p. 76.

sion to Isaac's vulnerability when the king notes that any one of the populace might have seized his wife. In the former narratives, the notion that anyone but the king would take the wife seems unthinkable; here, Rebekah (and, therefore, Isaac) is vulnerable even to *aḥad ha-am*, any member of the populace.

This section provides one further irony. Though this is the only narrative in which the king does not actually take the Patriarch's wife into his court (and, therefore, avoids God's wrath), Isaac still finds himself in trouble. In the previous instances, the ruler confronted the Patriarch because the latter's lie caused him anguish and suffering. Here, Isaac caused no such trouble for the ruler, but is nonetheless the object of the monarch's wrath. This man, the text claims, has no political "savoir faire."

Stage Five: Resolution

The resolution stage of the "type-scene" (12:20, 20:14-18, 26:11) continues the redactor's painstaking presentation of these three different themes. In narrative I, Pharaoh simply evicts Abraham from Egypt. The brusqueness with which he does so illustrates Pharaoh's lack of patience for the dissembling Patriarch, while the text's explicit mention of the fact that Abram is evicted with all of the goods that he was given in return for Sarai heightens our sense of both Pharaoh's generosity and Abram's deceitfulness. This fact provides a glaring contrast with the resolution stage of narrative II. There, only after the confrontation does Abimelech give Abraham cattle and servants (a list almost identical to that of 12:16), pointing, in contrast, to the distasteful manner in which Abram had acquired them in narrative I. Here, Abimelech makes restitution to Abraham, vindicating Sarah as well, while Abraham prays to God that He bring an end to the barrenness of Abimelech's household. The text's explicit note that God hearkens to Abraham's call completes the cycle of the resolution, so that each of the involved parties has made a gesture of apology/forgiveness.

Abimelech's offer to Abraham of any of the land in the area he might want serves to remind the reader of Abraham's dispute with Lot over grazing ground for their respective flocks (see esp. Gen. 13:10-11). Such an allusion does not seem accidental. Rather, it reminds us of Abraham's seeking, at all costs, to avoid further conflict with Lot. Because that text is commonly referred to in describing Abraham's gracious dealings with his neighbors and associates, the allusion to that incident here implies once again Abimelech's large measure of innocence. In masterly fashion, the redactor has perpetuated the notion of the complexity of these ethical questions through the very end of the narrative.

Whereas the resolution of narrative I highlights Abram's guilt by having Pharaoh summarily evict him from Egypt, and that of narrative II alludes to the complexity of many ethical issues by having most of the par-

ties involved make some restitution to each other, that of narrative III points to Isaac's weakness, for Abimelech neither evicts him from Gerar nor gives him gifts, but only promises protection for him and his family. While it is true that Abimelech did not seize Rebekah, it is significant that, in both narratives I and II, the Patriarchs receive grants of great value, while here Isaac receives nothing at all. In fact, it could be argued, since Isaac has demonstrated that he cannot care for himself the only "appropriate" gift from the ruler is the protection that seems to be so desperately needed.

One final note regarding the resolution of narrative III bears mention. In warning the people not to harm Isaac, Abimelech uses the verb *naga* (to touch). Significantly, the root appears exactly once in each of the three versions. In the first, it appears in the discussion of the "mighty plague" (*nega'im*) with which God punished Pharaoh. In the second, God tells Abimelech that He knows that the king did not touch (*naga*) Sarah. In both instances, the discussion centers on whether a source of great power (God or the ruler) exercised its option *li-nego'a* (to touch). Here, however, the apparent fear is that any of the inhabitants might harm (*noge'a*) Isaac. The contrasting uses of the same root further his characterization as weak and ineffectual.

To recapitulate, that the book of Genesis contains three versions of an almost identical story has long been noticed. It does seem very likely that the extraordinary conclusions which one would have to draw about the Biblical characters, if all the renditions of the legend stemmed from the same source, do support the theory of the documentary hypothesis. It also seems probable that the Biblical author must have had a standard "type-scene" in mind when constructing each of them. But the above analysis has demonstrated, I believe, that a complete appreciation of the import of these texts remains impossible without the "close reading" analysis attempted above. With the use of this analysis, it quickly becomes apparent that the Biblical redactor not only effected a brilliant combination of various documents making use of a standard literary paradigm with which he was familiar, but also used subtle and intentional literary techniques to express vastly different ideas in almost identical narratives. The first one, in which Abram devises his subterfuge even before arriving in Pharaoh's kingdom, expresses the darker side of his personality, while the second, in which Abimelech claims innocence deals with the always complex nature of questions of right and wrong and appropriate punishment. Finally, the third narrative, in highlighting Isaac's weakness, concludes the list of issues that such an analysis of text brings to the fore.

One final and basic question needs to be asked. Does the analysis in which we have engaged represent a reading of "hints" that the redactor left for the reader, or is our argument a *midrash* or homily on these well-known texts? I maintain that such a distinction is both impossible and unnecessary. While it seems relatively clear to us that the lessons and

implications derived by the authors of our classical midrashic texts are an imposition on the Biblical text rather than an extraction from it, it is by no means clear that they would have agreed. Theirs was an age in which certain tools in reading a text were more common and accepted than those tools are in our day. On the other hand, the literary techniques used in this "close-reading" of the "wife/sister" collection are those now utilized in many literary circles. To venture a guess as to whether these tools are ones which the Biblical author hoped we would use is to do just that; it is to guess. Such an assertion requires information which we do not have, and which we shall probably never have. One observation does seem fair, however: as long as men and women have known the Biblical text, they have been inspired to search continually for nuances, implications and insights never previously revealed. That they continue to do so is testimony, not to our increasing skill and expertise, but to the brilliance of the Biblical text which continues to enchant us all.

Beatification of the Bitburg Dead

BERNHARD FRANK

For Shame! For Shame!
Tame grows the memory
of the dead.
Hearts of lead are
the pendulums of history
beating heavy in the red
afternoon. Here
Democracy passed in
a trenchcoat made
light of ancient scars.

Heroes of
the Reich arise
enter the gates to Paradise:
 Rain has blessed you
 repossessed you —
 Come sit among the stars.

Hearts of lead are
the pendulums of history
tame grows the memory
for shame . . . for shame . . .

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The Perception of Law in Judaism

MORDECAI ROSHWALD

The Divine Origin of Law

THE FUNDAMENTAL PREMISE ON WHICH the notion of law in Judaism is founded is its divine origin, as stated repeatedly throughout the Pentateuch. The proclamation of the Ten Commandments is introduced with the words: "And God spake all these words, saying" (Exodus 20:1). It is God who tells Moses, "Now these are the judgments which thou shalt set before them" (Exodus 21:1), an announcement followed by a long series of laws which include what we would classify as criminal law, religious rules and moral injunctions. This pattern is consistently adhered to whenever legislation is the theme.

Not only are laws conceived as originating in God's promulgation, but the explicit claim is made that the divine commands are the only normative guidance which is binding; they must not be reduced or augmented: "Ye shall not add unto the word which I command you, neither shall ye diminish ought from it" (Deuteronomy 4:2). The book of laws, being divine, is absolute and final.

This perception stands in stark contrast to the prevalent modern notion that law is legislated by human beings and, according to the democratic theory, is binding because it is based on a universal, or at least widespread, consent. If laws were imposed by an autocratic ruler, or by a dictator, their moral sanction would be questionable. If they are enacted by the representatives of the people, freely elected to serve as legislators, they are, in the ultimate sense, self-imposed restrictions, freely chosen limitations and, therefore, binding. Nowadays, Rousseau's idea of the "general will" is implicitly accepted as the moral foundation of law.

To be sure, Western law, or some sections of it, is also perceived as the cumulative wisdom of many generations, solidified through judicial procedures and court judgments. The notion of common law draws its sustenance from such a perception. Still, even this — not, strictly speaking, democratic origin of legal validity — is not entirely divorced from a notion of widespread consensus, the good sense of many centuries. Besides, common law can be, and often has been, suspended and curtailed by statutory legislation, which is more clearly the expression of the will of the people.

The Judaic perception sees the law as a system of normative principles which are above human consent and are binding irrespective of such

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consent. The law, in this sense, is not autonomous, but heteronomous. This does not mean that it enslaves those bound by it, for while Israel does not legislate its own laws, it gave its free consent to become the Lord's nation and abide by His laws. There is a covenant between the Lord and the children of Israel which makes them a holy nation on the condition that they obey God. As "all the people answered together, and said, All that the Lord hath spoken we will do" (Exodus 19:8), they committed themselves to the Lord's ways. They freely consented to live according to the commandments of the Lord. They agreed to live by rules which are above and beyond the whim or will of an individual, or a generation, or a vogue, or a trend. The freedom is restricted to the acceptance or the rejection of the system; it does not extend to changing its substance. This doctrinal stance was to be eventually modified by the wide interpretive license which the rabbinical scholars assumed, as will be noted below. Also, the notion was to be developed of the "oral law," the elaboration of legal precepts which Moses was alleged to have received from the Lord on Mount Sinai, which he had not written down but had transmitted to future generations orally, and which served as the authority for rabbinical judgments. These developments, however, were not regarded as deviations from the absolute commitment to the total acceptance of the divine precepts, but, rather, as complements to them.

The Totality of Law

The law, in Judaism, is not limited to a narrow range of human affairs and activity, but attempts to cover diverse aspects of life — personal relations, behavior towards fellow Israelites and aliens, religious observance, rest days and holidays, hygiene and food consumption, regard for other spheres of creation, such as birds (Deut. 22:6) or trees (Deut. 20:19-20).

The tendency to map out the way of conduct for man was elaborated into a most detailed and intricate system by the legalistic interpretation of the Talmud, which seems to be dominated by a veritable *horror vacui*. The way of life followed by the Orthodox Jew who is guided by the compendium of the Talmudic law as embodied in the *Shulhan Arukh*, involves instructions and prescriptions for almost every moment in his life and nearly every circumstance. There are proscribed actions — whether of moral or ritualistic nature — and they include intricate dietary laws. There are holidays — with their specific prescriptions and proscriptions. There is prayer — three times a day, four on the Sabbath and holidays, five on Yom Kippur. There are blessings on breaking bread, on completing a meal, to welcome the new moon, on seeing the mighty or the wise. There are rules about haircuts and shaving and dress. There are rules about the composition of the material that a garment is made of, and so forth and so on.

This perception of law and its role in human life is antithetical to what is conceived of as the liberal ideal. Whereas the latter wishes to see laws and regulations reduced to a minimum — those laws which are essential for personal security and the basic needs of man — while leaving the bulk of human activity open to individual decision, Judaism does not cherish this kind of freedom. It is, instead, based on the notion that right conduct for man, in general, and for the Jew, in particular, has to be prescribed in great detail which is to be punctiliously followed. It strives for the maximum of guidance as provided by divine law.

Indeed, it is this law which assures an awareness of the presence of God in the life of the community and of the individual. The religious quest for the communion with God that is satisfied, in Christianity, through faith and prayer, is gratified, in Judaism, primarily through adherence to the countless commandments and rules. To be sure, faith and individual contact with God, whether expressed by the Psalmist or by Hasidic ecstasy, have their niche in Judaism as well. They are, however, less central to the Judaic way-of-life than the strict following of the law. The presence of God, and the related realization of the peculiarity of Israel, “the kingdom of priests and an holy nation,” is assured primarily by observance of the divine law. This does not necessarily mean that the observant Jew is aware of the presence of God on each and every occasion as he follows the minutiae of the religious law — unless he is an ultra-pious Hasid or a saintly person. Yet, the overall impact of the profusion of laws in Orthodox Judaism is the saturation of daily life with an air of sanctity — which may be another way of describing it as filled with an awareness of the divine presence.

The law not only covers human life with a dense net of rules and prescriptions, but does so with a great degree of intensity. The Jew does not obey the laws with the sense of duty of a good citizen who drives at the right speed and pays his taxes with more or less reluctance. The Jew feels an *elation* in not transgressing the speed limit — if we may use the example metaphorically — and in paying the taxes on time. The Jew is *eager* to fulfil the commandments and to avoid the transgressions. Adherence to the law becomes a major objective of his life.

While this attitude has been cultivated by many generations of the rabbinically-guided pious, its roots can be discerned in the Pentateuch: “And these words, which I command thee this day, shall be in thine heart: And thou shalt teach them diligently unto thy children, and shalt talk of them when thou sittest in thine house, and when thou walkest by the way, and when thou liest down, and when thou risest up” (Deut. 6:6-7). The law shall be in thine heart!

The Moral Essence of Law

As already indicated, the divine injunctions in the Pentateuch cover a great variety of spheres. Some of these are clearly matters of moral concern. Others of the commandments — such as those regulating the observance of holidays may be rationalized as normatively desirable in the quest for national-religious identity and social cohesion. Some injunctions, however, like those concerning animal sacrifices or the prohibition against consuming certain animals, are more difficult to explain on moral grounds. Indeed, a rabbinical tradition suggests that the biblical reference to “the commandments [*mizvot*], the statutes [*hukim*], and the judgments [*mishpatim*]” (e.g., Deut. 6:1) implies a distinction between moral “judgments” and ritualistic “statutes” (the “commandments” being the comprehensive notion of all the normative injunctions).

While this distinction is too obvious to be ignored, and while it may largely correspond to the differentiation between laws which should be binding on humanity at large and prescripts peculiar to Israel, there is a sense of an overall moral tenor which informs the normative system of the Pentateuch. There is an intense awareness of the clearcut difference between Right and Wrong, between just and unjust, and the insistence that the duty of man and of the Israelite is to abhor sin and to follow in the right path.

Moreover, many of the seemingly religious institutions, such as the Sabbath, while justified on a theological ground — after six days of creation the Lord “rested the seventh day” and “blessed the sabbath day” (Exodus 19:11) — also have a strong ethical aspect. On the Sabbath, not only is the Israelite man forbidden to work, but also his son, daughter, servants (slaves), cattle and the “stranger that is within thy gates,” i.e., the resident alien (Exodus 19:10). The rest day must be observed by all working beings, and thus becomes a universal, equalizing *right*.

The Day of Atonement, to cite another example, while a purely Israelite, or Jewish, holiday, focusses on atonement and repentance, on accounting for one’s deeds as judged by moral standards. Though it is, in some ways, the most purely religious of Jewish holidays — in the sense that it is least related to historical-national memories — it is, at the same time, saturated by ethical reflection. The well-known intensity of such reflection may have been reached during the post-biblical period, yet the foundation is found in the Pentateuch (Lev. 16).

The moral tenor of the law expresses the basic Jewish conviction that God and Right are bound together. God is the God of Justice and, therefore, divine law is the right law. Religion and morality are intertwined and, thus, both are benefitted. Morality is sanctioned by the Almighty and is ultimately vindicated by divine reward. God, in being moral, becomes respected and not only feared. Religion provides support for the believer, but, in being ethical, becomes worthwhile in itself.

The divine-moral substance of the law assures its supremacy over the whim and will of the mighty and powerful. There is no question in Judaism about the sovereign challenging the law. The legal principle that “the king can do no wrong” is meaningless, because the king, like any other human being, is in no way — whether substantive or technical — the fountain of the law, but is subject to the divine and moral commandments. Thus, David, who commits adultery and kills Uriah with the sword of the children of Ammon, is punished by God, even if there is no earthly authority which has the power to bring the king to account. Similarly, Ahab and his wife, who commit a judicial murder on Naboth, incur divine punishment. The law may not have been easily enforceable in respect to a tyrannical monarch, but there was no doubt that he was accountable and subject to it. If men could not punish the offender, God could, and the prophet made sure that the king knew he would have to pay for his offense.

Significantly, the Pentateuch has a direct injunction to the king — the king above other people because he might be tempted to forget his limitations — to read the law and abide by it:

And it shall be, when he sitteth upon the throne of his kingdom, that he shall write him a copy of this law in a book, out of that which is before the priests the Levites. And it shall be with him, and he shall read therein all the days of his life; that he may learn to fear the Lord his God, to keep all the words of this law and these statutes, to do them: that his heart be not lifted up above his brethren, and that he turn not aside from the commandment, to the right hand, or to the left . . . (Deut. 17:18-20).

The law is above the king, and it charts the path for his behaviour just as it does for others. Thus, the law becomes the great equalizer (“That his heart be not lifted up above his brethren”) — a point to be realized by the monarch, who, to borrow a Latin phrase, is no more than *primus inter pares*. There can be no place for absolute monarchy, for only the law — divine and just — remains absolute.

Subjection and Participation

If this description of the place of law in Judaism seems to indicate the absolute rule of divine law over the believers, if it suggests a passive acceptance of a heteronomous, though ethical, authority, such an impression does not reveal the whole picture. Into this relationship between the authority and the subjects there enter elements of participation by the latter which modify the perception of the law as authoritarian.

One such element is the conviction about the rightness of the laws and their moral character, which, as indicated, is an all-pervasive trait of the divine law. If the laws are right, and if man has a moral awareness, he cannot but approve such laws. He accepts them not only because they are commanded, but also because they ought to be observed.

Then, there is the element of learning and understanding that is

bound up with the Judaic perception of law and which involves active participation. Among the various synonyms that it uses for the notion of law, the Pentateuch already refers to the term *torah*, which means not only law, but also teaching — and thus involves learning. Indeed, the English translation of *Torah* as the Law is not more accurate than the German translation, *Lehre*, for *Torah* is Law and Instruction — or Teaching — in one.

This intellectual involvement on the part of the Israelites in the commandments of the Lord was broadened into a vast domain of legal exploration, reasoning and analysis by the rabbis of the Talmud and their followers for subsequent generations. Here the participation in interpretation of the divine law expanded into a legal scholarship, pursued both for its own sake and for the practical purpose of adjudicating cases on which the Pentateuch did not pass a judgment. While, theoretically, Talmudic law is an interpretation of Biblical law, it is, in fact, an enormous expansion of the Judaic legal system in its various domains. If it is realized that, for centuries — indeed, about two millennia — judges and scholars inquired into the determination of judgments in diverse fields and did so in the spirit of the basic tradition, their involvement can be seen as a monumental effort at participation in the divine law. Thus, the *halakhah* — the term used for the rabbinically determined law — becomes a testimony to a participatory theocracy, to man's effort to be God's active partner in paving the right way.

The idea of human-divine partnership in the *halakhah* is carried virtually *ad absurdum* by a Talmudic fable suggesting that God's dispute with the Heavenly Academy on a *halakhic* matter was referred to the rabbinical expertise of Rabbah bar Nahmani (*Bava Mezia*, 86a). As one popularizer of Judaism puts it in this connection, "God has been 'rabbinized.'"¹ The story is intended, of course, as an anecdote, but it vividly and symbolically conveys the notion of the weight of rabbinical involvement in the formulation of applied law in Judaism. By presenting God as discussing the law with the Heavenly Academy, it further humanizes it.

As is well known, rabbinic *halakhah* is, in fact, more than mere interpretation of the laws of the Pentateuch. It adjudicates in new matters, it adds countless prescriptions, it sometimes changes the law without openly saying so. As already mentioned, it is responsible for the detailed mapping out of the way-of-life of the Orthodox Jew, which is only broadly indicated in the Pentateuch. In other words, it actually goes beyond the assumption that nothing must be added to, or subtracted from, God's commandments. To the absolute notion of the unchanging law it adds the practice of the growing and developing law. It confronts the changing reality which was not encompassed in the fundamental statutes of the Bible, yet it does so with great circumspection. It does not

1. Hyam Maccoby, *The Day God Laughed* (New York: St. Martin's Press, 1978), pp. 146-7.

detach itself from the fundamental core and it pays respect to the divine law by considering its own work as merely an interpretation thereof. The change must not obliterate the absolute; it is bound by the fundamental and eternal and only tries to complement it in its own spirit. Man intentionally remains a partner, a junior partner, to divine legislation.

There is another way in which Judaism developed the cultivation of human participation in the legal theocracy to which it is committed. This is not a matter of learning or teaching, studying or expanding the law; it is a matter of practice, and is expressed in the Hebrew term *mizvah*.

Mizvah, in the original biblical sense, is best translated as "commandment." However, in later development, the term indicates "a good deed," "a charitable action," "an act of piety." Thus, it is a *mizvah* to help the poor, as it is to recite a blessing on eating new fruit of the season. Indeed, a pious man would eat the fruit in order to say the blessing. The essence of *mizvah* in this sense is to seek out the occasion to do the pious and charitable thing. It is not just abiding by the statutes and commandments — this is taken for granted; it is adding the positive good deed on the doer's own initiative, an extra-curricular activity.

The transition in the meaning of *mizvah* from the divine commandment to the voluntary action is a testimony to a religious and moral sophistication in the development of Judaism. It expresses the eagerness of the Jew, a member of an holy nation, to be involved in the improvement of the universe, to help God, as it were, in making the world better. The seeking out of a *mizvah* is an act of autonomous participation in the rule of God over the world and over His people. It adds to the rule of God the willing and eager involvement of man. The people of the Lord do not merely obey His commands: they seek out their own injunctions in order to sanctify and improve reality.

The Hand Of God Leaves No Fingerprints

ROBERT J. MILCH

FROM THE WESTERN STANDPOINT, THE concept of faith — that is, of consciously committing oneself to belief in God and, in addition, to belief in certain very specific things about God — is an important component of the religious sensibility. Yet, it seems to be absent from the Bible and is not treated in any significant way in the Talmud, the lens through which Jews have traditionally read the Bible. While Judaism displays little overt interest in such matters and, instead, emphasizes right action as the road to salvation, Christianity, at least in its classic form, is obsessed with faith, maintaining that the eternal life of the world-to-come is ensured not by doing anything in particular but by wholehearted acceptance of belief in Jesus as savior — the doctrine of justification by faith, originated by Paul of Tarsus.

The contrast between right thought and right action, or, in Paul's language, between faith and works, is an essential tool for understanding the differences between Judaism and Christianity, but it is often so exaggerated as to imply that thinking about God is irrelevant to a Jewish religious commitment and that doing is irrelevant to a Christian commitment. Both of these notions are false. Even in the New Testament there is stress on the importance of good works by some writers, foremost among them James, the brother of Jesus, who headed the early church in Jerusalem after Jesus died; and a concern for right action became more pronounced once Christians realized that the world was not about to end and, therefore, that social rectitude did matter.

Just as good works do, in fact, have a place in Christianity, though not the primary one, faith commitment and right thinking about God have a place in Judaism. The question of what constitutes right belief for a Jew — that is, of what Jews ought to believe — first became an important one in the Middle Ages (after a brief period in ancient Alexandria, as seen in Philo), when the intellectual world, both East and West, was dominated by a mode of philosophical reasoning that is usually referred to as Greek. Confronted with other religions that were not merely hostile but made monotheistic claims as sweeping as those of Judaism, thinkers like Maimonides, Hasdai Crescas and Joseph Albo sought to demonstrate the superiority of Judaism by defining its essential doctrines. As part of this effort they formulated concise statements of the central tenets that were meant, apparently, to serve a dogmatic function something like that of the Nicene Creed in Christianity. The most famous of these, of course, is the Thirteen Principles of Maimonides.

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Many of the same thinkers also tried to demonstrate that a concern for delineating basic principles was grounded in Judaism's most fundamental sources. Thus, for instance, while the opening statement of the Ten Commandments, "I am the Lord your God who brought you out of the land of Egypt," is probably to be regarded as an introduction to the body of the commandments or, perhaps, as a kind of identifying description of the deity who was issuing them, Maimonides took the phrase as, in fact, the first of the commandments — in other words, as an obligation to believe in God. Nahmanides held the same view, and so did several other Jewish philosophers of the period.

In the end, none of the proposed creeds won official acceptance, partly because binding doctrinal formulations were alien to Judaism, but even more because world Jewry was so decentralized that there was no authority capable of adopting and enforcing such a formula throughout all of its branches. Thus, the Thirteen Principles may be printed in the Siddur but they are not part of the service, and none of the other creeds attained even that slight degree of recognition. Similarly, while Maimonides made belief in God the first item in his enumeration of the 613 *mizvot*, the fact that there are 612 others clearly indicates that even he did not accord to the obligation to believe in God the same degree of importance that it is accorded by Christians and Muslims.

While all this demonstrates that attempts to define Judaism in theological categories derived from Greek and Arab philosophy are somewhat out of the Jewish mainstream, it should not be taken to imply that the idea of faith, in at least some sense, is not germane to Judaism or part of its authentic heritage.

In order to understand what faith might mean in Jewish terms, it is necessary first to see why it plays such a small role in the Bible. There are several reasons, but the central and most obvious one is that the Bible was compiled in an era that was universally an age of faith.

The ancient world was prescientific and prelogical. Animated by a deep sense of awe at the seemingly impenetrable mystery enshrouding the workings of the world, it was convinced that all aspects of life were energized and governed by divine forces — gods and spirits. This understanding of reality was so ingrained and natural that doubting it would have seemed eccentric and perverse, just as doubting viruses and atoms, or the laws of cause and effect, would be to us.

As a result, all ancient peoples knew, without ever having to reflect on it, that the gods existed, both theirs and those of others, just as they knew that the world existed, and in this respect the early Jews were no different from other peoples. In due course, one out of the many gods became the particular deity of the Jews, but the Bible makes it plain that it was quite a while — probably well after the Babylonian exile — before most Jews ever thought to deny the existence of the other gods. When they did, placing themselves in the odd position of denying something

that seemed self-evident to everyone else in the world, they were condemned as atheists. Such an accusation seems silly nowadays, but it made good sense in a polytheistic age when denying the gods was akin to denying reality itself.

In a world that framed its conception of divinity in this way, a personal decision to believe in a god, which, to us, seems the essence of faith, would have been irrelevant and unnecessary. The only question of consequence pertained to the relationship between the deity and oneself or one's people. To use modern terms, the existence of the god was a matter of objective knowledge; whether or not there was anything between oneself and the god, on the other hand, was subjective — something that could be only a matter of personal conviction.

All of this is implicit in many of the narratives recounted in the Bible, and is particularly well illustrated by several incidents connected with the Exodus and the sojourn in the wilderness. To a modern reader, one of the strangest features of the biblical account of the departure from Egypt and its aftermath is the recurring situation where the Israelites are depicted as terrified by each new crisis even though they have already experienced numerous instances of God's coming through to save them from disaster. The most dramatic occurrence of this kind takes place when they find themselves trapped between the Egyptian army and the Red Sea. The ten plagues just a few days earlier should presumably have given the Israelites some confidence in God's willingness to take care of them, but, instead, as if the plagues had never happened, they panic. The traditional commentators like to blame this reaction on the mixed multitude, but it doesn't work, because even if the non-Israelite hangers-on were the first ones to raise the hue and cry, the Israelites picked it up soon enough, making it evident that they and the mixed multitude were driven by the same fears. If one takes the biblical account at face value, one is forced to conclude that the early Hebrews were mentally deficient in some way, for they apparently could not remember for even a day or so events that anyone else would probably remember for a lifetime.

A closer examination of the famous parting of the sea, however, provides the explanation. Despite the popular tradition that associates this incident with the Red Sea, it had nothing to do with the body of water known by that name and, instead, involved what the Bible designates as the *yam suf*, or "sea of reeds," obviously a marsh or swamp of some kind. Until the construction of the Suez Canal in the mid-nineteenth century, the border between Egypt and the Sinai Peninsula was marked by a belt of swamps running from Lake Menzaleh southward to the Bitter Lakes, and most scholars now agree that the *yam suf* was located somewhere in this district.

According to the biblical narrative, the Israelites had the *yam suf* in front of them and the Egyptians to their rear. At this moment of high

danger, a powerful east wind fortuitously came up and blew the waters back, making it possible for the Israelites to escape on foot by fording the marsh. The Egyptians followed, but the wheels of their chariots bogged down in the mud, so that they were still in the marsh when the wind dropped and the water rushed back to its normal level, drowning many of them and causing the pursuit to end.

What we have here is certainly not a miracle in the popular sense of a temporary suspension of the laws of nature, for, aside from the consideration that an alleged suspension of natural law would be a troublesome philosophical contradiction, a miracle of that kind would have been instantaneous, whereas the Bible specifies that the wind had to blow all night to do what it did. In other words, the Bible describes the operational aspects of the event at the *yam suf* as something well within the range of the normal, a natural occurrence working itself out in the same way as do other natural occurrences of the same kind. But there is a difference. In the long history of the swampy district on the Egyptian frontier, there must have been many occasions when east winds temporarily drained the marshes, just as, to cite another incident that occurred soon after the Exodus, the European quail that winter in Africa must have been passing through Sinai on their annual migrations for as long as there had been quail. But, in the particular incidents recounted in the Bible, both of these utterly natural phenomena occurred at just such a time and in just such a way as to serve a world-historical redemptive purpose in the life of the people of Israel, and this is also true of the equally natural phenomena that we call the ten plagues.

Now, from one point of view, and it is certainly the point of view of the Bible, the God of Israel is the master of nature and, therefore, if certain natural events fall out in precisely the right manner as to benefit the Israelite people, this is a sure sign that God is concerned about the Israelites. On the other hand, if one does not see God as concerned about the Israelites, then everything must be attributed to coincidence — a confluence of accidental events that just by chance happened to be good for the Jews but have no larger meaning. To put it differently, and this is the crux of the matter, in the Bible, and for Jews today as well, faith means the willingness to see divine purpose in events that to all outward appearances are unmotivated — that is, to see God's hand in what for anyone else is no more than a normal process.

Looking at things this way it is easy to understand why the Israelites were so prone to panic whenever a new danger threatened. Four hundred years of bondage, during which God had done nothing for them, must have taught them that He was not profoundly concerned with their plight. When circumstances finally made possible their escape from Egypt, they took advantage of the situation, but, despite what Moses may have told them, little if anything in their own experience had prepared them to believe that God was really behind it all. More likely than not they

simply saw themselves as unbelievably lucky, and each new crisis made them fear that their luck had finally run out.

Looking back from a distance of three thousand years, and from a perspective conditioned by the religious vision embodied in the Bible, it is no great feat to see the events in the desert of Sinai as acts of God, and all too easy to condemn the Israelites for not being equally willing to do so. But lacking our predisposition to give those events a pietistic interpretation, they saw them the same way we see things that happen in our day, with all of the imperfections, shortfalls, and causative factors in such high relief that it was well-nigh impossible to see anything else.

The author of the First Book of Maccabees was a victim of the same self-imposed limitation. He lived a thousand years after the Exodus, so it was just as much ancient history for him as it is for us and, thus, he read it the same way we do, as a miraculous series of redemptive events. But when he wrote about happenings in his own time — the Jewish war of liberation against the Seleucid Syrians — he told the story the way he had seen it as a contemporary eyewitness and, thus, even though he related the tale in a Hebrew idiom closely patterned on that of the historical books of the Bible, and even though he depicted the Jewish protagonists as deeply motivated by religion and convinced that they were doing God's work, he never claimed that God fought at the side of Judah Maccabee or that any of the amazing Jewish victories against overwhelming odds was due to divine intervention or participation. He had perfect faith that God had helped the ancient Israelites but could not bring himself to believe that anyone but the Maccabees had helped the Maccabees.

If distance makes the heart grow fonder, it also makes faith easier. The author of First Maccabees believed that miracles had occurred in the ancient past but not in his own day. Many present-day Jews are prepared, no doubt, to see God's hand in the Exodus and also in the victory of the Maccabees, but what about Israel's 1948 War of Independence? It is not difficult, given the Bible as one's authority, to believe that God led the twelve tribes under Joshua into the land, but can we also believe that he led the nonobservant *haluzim* of the first aliyah?

Since both of the preceding questions pertain to the millennial rebirth of a Jewish polity in the land of Israel, there is every reason to want to answer that the events they concern were, indeed, examples of God's providential involvement in our affairs. But what about occurrences that did not take place in olden times, do not involve Israel, and cannot be regarded as apparent fulfillments of biblical prophecy or ancient yearnings? Traditions originating several centuries after the event tell us that a heavenly sign led the Jews of Germany to Poland in the Middle Ages, thus giving divine endorsement to one of the great Jewish communities of the diaspora. But, in 1654, when Asher Levy and twenty-four other Dutch Jews from Brazil ended up in New Amsterdam instead of back in Holland, which is where they wanted to go, thus beginning the

series of developments that led to the creation of the largest and most prosperous Jewish community in history, were they, too, guided by a heavenly sign?

Even to pose such questions is to underscore the dilemma of faith as it existed for our ancestors and as it still exists for Jews in our day. Whatever economics, political science, sociology, anthropology, or any other discipline may tell us about the mechanisms that make things happen in the world, we must, as Jews and as theists, be willing to believe that as explanations of how and why things happen, such mechanisms are necessary but not sufficient. We must also be prepared to believe that God, somehow, stands behind all those natural mechanisms just as we believe that He stood behind the east wind that blew back the waters of the *yam suf*.

Our ancestors, who thought the jig was up every time a new hand was dealt, found it hard to believe that the wind was anything but a lucky break. To do better than they did is far from easy, because we know so much more about the everyday workings of the world, and thorough knowledge of the material often impedes knowledge of the spiritual. The world's ordinariness is so much in contrast to God's presumed splendor that if God does involve Himself, it is rarely in a way that is easy to recognize at the time; yet, nonetheless, we must, for if we do not see Him working as actively in our day as He did in the past, our commitment to Judaism presupposes, whether we admit it or not, that our religion is only of antiquarian interest.

The hand of God, one might say, leaves no fingerprints — except, perhaps, on the individual soul. It is present only if faith makes it be present. The challenge to find it is as real today as it was for those who preceded us three thousand years ago.

Medieval Christianity Confronts Talmudic Judaism

Review-Essay by JOEL E. REMBAUM

The Friars and the Jews; the Evolution of Medieval Anti-Judaism. By JEREMY COHEN. Ithaca and London. Cornell University Press, 1982. 301 pp.

Judaism on Trial: Jewish-Christian Disputations in the Middle Ages. Edited and translated by HYAM MACCOBY. Rutherford, Madison, and Teaneck. Fairleigh Dickinson University Press. 245 pp.

EVENTS OF THE PAST TWO DECADES HAVE GENERATED a renewed interest on the part of Jews in the history of Jewish-Christian relations. Increasingly, open dialogue with Christians on the one hand and the pressure of heightened missionary activity by zealous Evangelicals on the other have moved Jews to examine and reexamine sources that can shed light on two millenia of Jewish-Christian interaction.

There was a time when the student of Jewish history focused on the tragic events of late spring, 1096, as marking a dramatic and downward turn in the fortunes of medieval European Jewry. Today, the historian notes that the twelfth century was a period of cultural, demographic, and economic growth for the Jews of England, France, and Christian Spain and that, within two generations of the first crusade, the decimated Rhenish communities had reconstituted themselves and had begun to create new forms of Jewish religious expression. The conclusion to which one inevitably is led is that if a real decline in medieval European Jewish civilization is to be found one must look beyond the convulsions of the late eleventh century crusade movement.

The ferment generated in Western Europe by the so-called "Renaissance of the Twelfth Century" afforded Jews the opportunity to move into new areas of economic endeavor and thereby to undertake new cultural and intellectual activities that permanently enriched their tradition. Ironically, the dynamism of twelfth century European culture generated a reaction that eventually engulfed the Jewish communities of England and France (*circa* 1300) and led to the severe decline of the Jewries of Germany and Spain (*circa* 1400). It was in the course of the thirteenth century

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that a confluence of social, political, economic, and religious factors set off this erosive process.

An important catalyst in the increase of religious pressure on the Jews of thirteenth century Europe was the reaction of the Church to Christian heresies that had emerged in the prior century. During the early 1200s the papacy, then a dominant force in Christendom, unleashed two new weapons to combat the heretics: the Inquisition and the orders of mendicant friars, the Dominicans and the Franciscans. The Inquisition was to seek out and destroy heretical leaders and congregations through extraordinary juridical procedures, while the friars were to motivate the Christian masses, by example and by preaching, to find renewed meaning in orthodox Catholic doctrine and to reject any ideology that was inconsistent with that doctrine. These new institutions, while cooperating with local church leaders, essentially were independent of them and answerable directly to the pope. This independence allowed them to take radical steps that, on occasion, moved them beyond the bounds of established Christian tradition.

To be sure, Judaism was not viewed by the Church as a Christian heresy and, consequently, ought not to have been an object of concern of either inquisitor or mendicant. For two reasons, however, this proved not to be the case. First, churchmen began to learn of the Talmud and came to an understanding of Judaism as something more than a Biblical religion and concluded that the Judaism which they saw in medieval Europe was not the tradition to which the Church had granted official toleration. Thus, Talmudic Judaism, now defined as a perversion of Biblical religion, was considered by some to be a quasi-heresy and, hence, subject to Church scrutiny. Second, Dominicans and Franciscans, already zealous for Christianity, became sensitive to what they perceived as a threatening Jewish presence in their midst and, deviating from established Church policies of toleration, embarked on a program intended to influence Jews to accept Christianity and, ultimately, to eradicate Judaism from Christian Europe.

Inquisitors and friars often worked together, especially when the scholarship of the mendicants was needed for inquiries into heretical literature and ideas. Indeed, because of their zeal, mendicants were routinely appointed as inquisitors. While it is not clear if Jewish works were subjected to formal inquisitorial proceedings, the papacy, in 1239, did institute an investigation of Talmudic books that included the participation of Dominicans and Franciscans. Thus began a process of Christian involvement with the Talmud as a work to be suppressed and censored or, ironically, to be used to prove the truth of Christianity to Jews. While popes, royalty, bishops, and university leaders joined in this effort against the sources of Jewish tradition, the friars emerged as the ubiquitous prime movers in the condemnation and destruction of the Talmud and in its use as a tool for proselytizing the Jews. Aided by zealous Jewish

apostates, they embarked on a program of action that, in effect, undermined the Church's toleration of Judaism, a foundation-stone of the acceptance of Jews in Western Europe.

Two recent books contribute new insights into the interplay between medieval Christian concern over the Talmud and the zeal of mendicants and apostate Jews to destroy European Judaism and bring Jews into the Christian fold. Jeremy Cohen's *The Friars and the Jews; the Evolution of Medieval Anti-Judaism* is a brilliant study of the development of the mendicant friars' thirteenth century campaign against Judaism, while Hyam Maccoby's *Judaism on Trial: Jewish-Christian Disputation in the Middle Ages*, offers fresh translations, paraphrases and analyses of the three major Talmud "disputations" of the Middle Ages — Paris (1240), Barcelona (1263), and Tortosa (1413-14). The two authors set out to accomplish different goals: Cohen — to describe the evolution and impact of the anti-Jewish attitudes and policies of the Dominicans and Franciscans and to indicate the presence of a "school" of anti-Jewish propagandists that revolved around Raymund de Peñaforte; Maccoby — to elucidate the significance of the disputations and, primarily, to provide the reader with an accurate understanding of the written records of these seminal events.

In his introduction, Cohen signals to the reader what the main thrust of the work will be: an examination of the causes and effects of the mendicant friars' abandonment of the Augustinian principle of toleration of Jews and Judaism. The book is divided into three parts. In Part I, "The Emergence of Mendicant Anti-Judaism," Cohen first discusses the Augustinian concept noted above and indicates that its influence continued through the twelfth century. That principle, enunciated by Augustine of Hippo, justified a place for the Jews in the Christian world. Though punished by God who allowed the Romans to conquer and expel them from their land, the Jews in their dispersion play a divinely ordained role as bearers of the Bible, which they do not correctly understand, so that the Christians, who do comprehend the meaning of Scripture, can more readily refer to it when confronting the heathen. Since their coexistence with the Christians is according to 'the will of God, Jews are to be grudgingly tolerated by Christian society.

The author then briefly reviews the rise of the Dominican and Franciscan orders and suggests a plausible reason for their anti-Jewish sentiments:

... [T]he most predominant attitude of the friars toward the Jews was marked by an aggressive missionary spirit and often violent animosity. Since the friars represented the Christian middle classes both in their personal origins and in their religious program, their hostility toward the Jews may have derived in part from anti-Jewish sentiments typically harbored by European merchants. By the thirteenth century, the Jews of Europe were ... the chief competitors of the New Christian bourgeoisie (p. 43).

Cohen next focuses on the early phases of the mendicants' involve-

ment with rabbinic Judaism, specifically their participation in the burning of Maimonidean works in Montpellier in 1232 and in the Paris Talmud trial in 1240. He concludes his presentation in Part I with a survey of the disastrous effects for Western European Jewry of the 1240 condemnation of the Talmud.

From an ideological perspective the single most destructive result of the 1240 Talmud trial was the undermining of the Augustinian notion of toleration. Cohen correctly asserts that the newly emerging Christian view of the Talmud and the role that it played in Judaism led many a Churchman to rethink the viability of the Jewish presence in Christendom. It had been argued in Paris that the Jews preferred the Talmud to the Bible and that the words of the rabbinic sages carried greater weight than those of the prophets. That being the case, the Jews had forsaken the role which God had assigned to them, namely, to be the keepers of the Bible. They were now the keepers of the Talmud, and as such had no place in Christian society. Moreover, the Talmud was considered to be filled with blasphemous statements about God and Jesus and, in no uncertain terms, Pope Innocent III had stated that only Jews who avoided defaming Christianity would be eligible for toleration by the Church. Given the central role in Judaism of the blasphemous Talmud it became clear that no Jew could avoid defaming Christianity. Interacting with the already zealous anti-Jewish feelings of the mendicants, such opinions regarding the Talmud and Jewish status inevitably led to one conclusion on the friars' part: the rationale for the Augustinian toleration of Jews was null and void. Judaism was a heresy that had to be eradicated.

The second part of *The Friars and the Jews*, "Ideological Refinements," is the heart of the book. Here we meet three personalities who shaped the evolving "Jewish Policy" of the mendicants: Raymond de Peñaforte, Pablo Christiani, and Raymond Martini. Peñaforte assumed the role of the prime mover who created the institutions necessary to train the friars in Hebrew and Arabic and who involved his disciples, Pablo and Raymond, in the effort against the Jews. Peñaforte can also be seen as the bridge between the 1240 Paris Talmud and the Barcelona disputation of 1263. From 1230 to 1238 he was the confessor to Pope Gregory IX. Thus, when the Jewish apostate Nicholas Donin approached the pope in 1236 with his infamous charges against the Talmud, Peñaforte was among Gregory's confidants and probably was influential in moving the pope to act against the Jews' books. Similarly, it is likely that he was a factor in King James' decisions to allow the Spanish friars to increase their pressure on the Jews of the Iberian peninsula.

Cohen then returns to an examination of the activities of Pablo Christiani, Nahmanides' interlocutor in the Barcelona debate and one of the first to engage actively in proselytizing Jews by preaching to Jewish audiences. With Pablo, the Christian use of the Talmud against Judaism reached a new level of sophistication. In Pablo, too, the influence of Peña-

forte looms large, since it was his preaching that convinced the Jew, Saul of Montpellier, to accept baptism, the name Pablo Christiani and then to join the Dominican order.

Pablo's program of using rabbinic sources to preach to Jews required a manual of Talmudic texts to which proselytizers, less tutored in classical Judaism than he, could refer. The task of creating such a handbook (of more than one thousand pages) fell to the Spanish Dominican, Raymond Martini, yet another follower of Peñaforte, who mastered both Hebrew and Arabic at an academy established by his master. Cohen succinctly indicates the link between Pablo's preaching and Martini's compilation, the *Pugio fidei*: "... [T]he arguments of the *Pugio fidei* follow almost exactly the agenda set by Pablo Christiani for his disputation with Moses Nahmanides in 1263" (p. 136). In summarizing his enlightening and original analysis of the Peñaforte "school" of anti-Jewish polemicists, Cohen notes:

Just as Pablo had done in 1263, Martini argued that contemporary Jewry had broken away from its heritage of the divinely revealed faith of the Bible. For although the rabbis of the Talmud could not bar the correct interpretation of Scripture from entering their literature altogether, talmudic Judaism, still maintained by the Jews of medieval Europe, constituted a willful rejection of the divine ordinance to the Jews. Like Pablo, Martini exploited the revealing exegetical admissions of rabbinic literature to the utmost extent, but in no way that prevented him from condemning talmudic Judaism as severely as Nicholas Donin had condemned it some forty years earlier . . .

The practical ramifications of Raymond de Peñaforte's ideology concerning the Jews, the dire need to suppress the heresy of modern rabbinic Judaism and convert the infidel to Christianity, which became evident in the various activities of Pablo Christiani's career, found full expression in the text of the *Pugio Fidei* (p. 154).

The disciples of Peñaforte fully developed the methodology of citing rabbinic traditions in order to prove to the Jews the truth of Christianity. Yet, if the Talmud contained such religious truths, why was it, and the tradition that was based on it, so vehemently condemned by Pablo Christiani and Raymond Martini? Was not its use as a source for demonstrating religious truth tantamount to admitting that it was a worthwhile book? The answer to these questions is a resounding "No." In one of his most insightful pieces of analysis Cohen explains how the medicants could, at the same time, condemn the Talmud to the flames and refer to it while proselytizing the Jews. This seemingly dichotomous view is implicit in Pablo's handling of the Talmud but is most clearly expressed in Martini's *Pugio fidei*, as Cohen explains:

In the introductory passage, Martini distinguishes three different genera of expressions of Jewish belief. First, he speaks of the law and prophecies of the Old Testament, which along with their correct interpretations would, albeit prefiguratively, establish the truth of Christianity. These

interpretations or *traditiones* were preserved by the Jews of the Bible as part of their oral tradition, which eventually came to be recorded by the rabbis of the Talmud. Such correct interpretations of Scripture must be extracted from rabbinic literature “like pearls out of a very great dunghheap.” Second, in contradistinction to these select few *traditiones*, the vast majority of talmudic teachings are described as the aforementioned dunghheap, the head of a dragon or toad, or the venomous sting of the bee. This body of literature, replete with “absurdities,” propagates the false beliefs “regarding the messiah and so many other matters which the Jews have believed from the time of Christ.” Third, Martini identifies his present enemy, “the perfidy of modern Jews,” which expresses itself as both “impudence” and “evil.” It is against this third brand of Judaism that he intends to direct the christological *traditiones* of the first (p. 139).

While there exist kernels of spiritual truth embedded within the Talmud they are so obscured by the book’s “absurdities” that only Christians can draw them out. Indeed, it is as if the Jews’ spiritual “blindness,” the same “blindness” that prevents them from seeing the true meaning of Scripture, prevents them from grasping the *traditiones* regarding Jesus that the early rabbis knew and transmitted. Since the bulk of the Talmud contains the products of the “blindness” it must be destroyed lest the Jews be misled. In the meantime, it becomes the mendicants’ task to extract the “pearls” and make the Jews aware of them.

Cohen concludes the second part of *The Friars and the Jews* with yet another new insight into the mendicants’ use of rabbinic material in their anti-Jewish campaign. He examines the works of the great fourteenth century exegete, the Franciscan Nicholas de Lyra, but focuses on the *Quodlibetum de adventu Christi*. Contrary to the prevailing opinion, he argues that the *Quodlibetum* was written as an anti-Jewish tract expressing its author’s strongly negative attitudes toward Judaism. Cohen shows that both in concept and detail the *Quodlibetum* reflects Martini’s *Pugio fidei* and he sees this as evidence of the spread beyond the narrow confines of Spanish Dominican circles of the Peñaforte school’s conceptualization of Judaism and, also, as an indication of the continuing erosion of the toleration of Jews in late medieval Europe.

In Part III of *The Friars and the Jews*, “The Ideology in Perspective: Its Application and Its Significance,” Cohen considers the ways in which mendicants carried their new perceptions of the Talmud, Judaism, and the Jews to the masses. He first examines the activities and writings of Raymond Lull, whose life was touched by Peñaforte and whose career was shaped by his obsession to convert the infidel. Simply put, Lull argued that if Jews refused baptism they ought to be expelled. Cohen then turns his attention to Matfre Ermengaud and Berthold von Regensburg, both of whom represent a new dimension in the spread of the mendicant anti-Jewish doctrine east of the Pyrenees — the expression of their ideas in the vernacular and in popular media. Matfre, a Franciscan, wrote a long poem in Provençal in which, among other

attacks on Judaism, the Talmud is denounced as the reason for the Jews' stubborn adherence to the letter of the law. Berthold, also a Franciscan, preached in German. Cohen notes that, like the other mendicants presented in his book, Berthold abandoned the Augustinian notions of toleration, declaring that the Jews were in league with the Devil and in no way fulfilled a divinely ordained function. He also alluded to the Talmud, deeming it to be "completely heretical," so much so "that it is bad that they (the Jews) live" (p. 234). Cohen thus indicates how theory was transformed into practice and how ideas that were nurtured in the intimate colleges of the scholastics eventually moved into the public arena and began to influence the thinking of the masses.

In the conclusion to *The Friars and the Jews* Cohen returns to an issue briefly discussed early in his work: "What led to the theological attack on rabbinic Judaism by the mendicants in the thirteenth century?" (p. 245.) As in Part I of the book (p. 43) he allows for the fact that the friars reflected the anti-Jewish sentiments of that element of European society from which they came — the middle class. But he is not totally satisfied with this explanation and proceeds to examine other possibilities, suggesting that ideological factors may have shaped the mendicants' outlook on the Jews. The personalities studied in the book, were, after all, men of ideas. Thus, Cohen's suggestion is not at all far-fetched. One notion that may have motivated religiously sensitive Christians in the thirteenth century was that the end of days was at hand. Given the venerable belief that the Jews would accept Christianity immediately prior to the final redemption, it follows that some zealous believers might conclude that, with the approaching *eschaton*, the extant Augustinian toleration of the Jews had run its course.

Cohen notes that perhaps an even more significant influence was

The new attitude to the Jews . . . (which), appears to have derived even more from a mounting trend in ecclesiastical circles to view the Church of Rome (*romana ecclesia*) not merely as the papal see or delimited jurisdiction of the pope in a Christendom governed jointly by spiritual and temporal swords, but rather as comprising the entire Christian *respublica* or *congregation fidelium*. . . . All of society came to be viewed as an organic unity, whose *raison d'être* consisted of striving for and ultimately realizing the perfect unity of Christ on earth (p. 248).

With such a notion of organic societal unity "no room existed for infidels." The Jew did not belong. It was in the first half of the thirteenth century that the Church reached the apex of its power and that this unity began to be sensed. Having arrived at this *plenitudo potestatis*, the Church attempted to maintain its power in three distinct but interrelated ways: 1) it sought to regulate human thought; 2) it attacked all innovation in theology; 3) it developed a "nativist" attitude that identified as threatening aliens all people whose ideals and allegiances lay beyond the scope of European Christianity. In moving against the Talmud and against

Judaism, the friars and, to a certain degree, the papacy were treating Jews in the same manner as they did any threat to the power of the Church.

One is reminded of a Churchman from an earlier generation who held similar opinions. Agobard, Bishop of Lyon in the early decades of the ninth century, considered the Carolingian kingdom, then under the rule of King Louis the Pious, to be the restored Roman empire. In Agobard's view all inhabitants of the empire had to be Christians in order to be citizens. The Jews, a tiny but clearly defined and tolerated minority, represented an alien threat to unity and, therefore, he attempted forcibly to convert them and to defame them by calling people's attention to their blasphemies against Jesus and God. The parallel with the mendicants, both in attitude and in action, is striking and lends credence to Cohen's analysis.

It is possible, however, to question some of Cohen's assumptions. For example, it appears that he overstates the degree to which the papacy shared the mendicants' perceptions of the Talmud and the Jews. The fact is that the popes did not negate the toleration of the Jews and, into the sixteenth century, they did allow Jews to keep their Talmuds, albeit in a censored form and with the removal of certain statements that were deemed to be blasphemies against Christianity. The popes also appear to have been less ideologically motivated than the mendicants and more sensitive to political and economic matters.¹ This criticism and others are minor and in no way detract from the overall quality of Cohen's presentation.

We can be very pleased with this book, which fills a void in our understanding of important events in medieval Jewish and European history. It is rich in its use of primary and secondary material, and its interpretations are thoughtful, thought-provoking, and coherent. It is well written and is so structured that the reader is always looking forward to the next stage of development. *The Friars and the Jews* is an important addition to the expanding library of works on the history of the Jews in the Middle Ages.

In Judaism on Trial Hyam Maccoby also presents us with a well-organized book. He begins with a brief introduction containing a statement and the rationale of his interests, especially his intention to explicate carefully the 1263 Barcelona debate. Part I gives the reader an overview of the three disputations. Here the author elucidates the background of each event, the important features of the disputations, the issues discussed by the participants, and the significance of each event in terms of the changing fortunes of the Jews in the Middle Ages. In Part II, Maccoby offers a new English translation of Nahmanides' Hebrew account of the Barcelona proceedings as well as an English translation of the Latin Christian report. Part III is devoted to the texts of the Paris and Tortosa

1. See J.E. Rembaum, "The Talmud and the Popes: Reflections on the Talmud Trials of the 1240s," *Viator*, 1982.

disputations, in English paraphrases and translations of the relevant materials, some complete and some excerpted. Maccoby concludes *Judaism on Trial* with end-notes to the work's introduction and to six of its twelve chapters, a bibliography, a general index, and an index of quotations.

Since Maccoby finds the Barcelona disputation to be the most interesting and most important of the three debates, his treatment of this event and its literary sources fills nearly half (99) of the book's 215 pages of text. There is no question about the significance of the 1263 debate, which marked a new level of sophistication in medieval Christian understanding of Judaism, and represented the adoption of a new tactic in the Christian effort to attract Jewish converts: citing Talmudic passages as proof-texts for the truth of Christian teachings. Like Jeremy Cohen, Maccoby suggests that the thirteenth century Christian disputants found in the Talmud evidence of an early rabbinic awareness of the truth of Jesus' messiahship, and that it was the later generations of sages who obscured the expressions of this awareness with their midrashic obfuscations. This Christian understanding begins to emerge in 1263 and is carried down to the discussions at Tortosa in 1413-14 (pp. 41-44, 89). He also notes that Raymundus Martini's important compilation of midrashic sources, the *Pugio fidei*, derived from the Christian involvement with rabbinic works in 1263 (pp. 41, 43). Maccoby astutely observes that the impact of the *Pugio* was far-reaching, with its influence being felt in the Tortosa disputation held some 140 years after the book's publication (p. 90).

With this enthusiastic treatment of the 1263 debate, the author fails to take note of certain important matters relevant to the other disputations. How helpful it would have been had he examined the significant developments that followed in the wake of the Paris Talmud trial of 1240. Not only was the Talmud burned in Paris in 1242, but there were subsequent attacks on Talmudic works in France, culminating in Bernard Gui's activities in the early 1300s. This destruction of rabbinic works was a significant factor in the decline of French Jewry. Associated with this activity was a Christian compilation of Rabbinic sources that ante-dates Martini's work. The *Extractiones de Talmut*, a product of the University of Paris scholarly community, served the purposes of the French anti-Jewish zealots much as the *Pugio* met the needs of their Spanish counterparts. To be sure, the two works functioned in different ways, inasmuch as the *Extractiones* afforded proof of the essentially "blasphemous" and "perverse" nature of the Talmud which justified its destruction. It is unfortunate that Maccoby neglected to refer, even briefly, to these important matters, especially since he does deal with similar issues in discussing the Barcelona and Tortosa events. This oversight is also reflected in the bibliography, from which certain works, relevant to the fate of the Tal-

mud and French Jewry, are missing.² The book's readership greatly could have benefitted from their inclusion in the bibliography and from the incorporation of their findings in Maccoby's presentation.

But among Maccoby's important contributions is his analysis of the authenticity of Nahmanides' account of the Barcelona disputation. He summarizes studies by Y. Baer, C. Roth, and M.A. Cohen, all of whom raise questions regarding the accuracy with which Moses ben Nahman wrote his *Vikuah*. In responding to them, Maccoby offers a reasonable defense of Nahmanides' record of the proceedings. The strength of his argument comes from a careful reading of the text of the *Vikuah* and from an insightful understanding of the workings of the medieval mind. He correctly asserts that one ought not to expect from a medieval intellectual the kind of "consistency" often ascribed to a modern intellectual. In criticizing Baer for holding such an opinion Maccoby comments:

He fails to appreciate the dialectical character of Nahmanides' mind. The either/or approach which Baer employs in relation to the Aggadah appears also in his discussion of Nahmanides "rationalism." Either Nahmanides was a rationalist (as he "pretended" to be at the disputation) or he was a mystic. The possibility which Baer overlooks is that he was both (p. 62).

Maccoby emphasizes that, for thinkers like Nahmanides, there are many sources of knowledge, all of which can generate truth as long as certain criteria are met (p. 63).

He focuses on what has been viewed as the major inconsistency in Ramban's statements during the disputation, namely, his arguments that he does not feel obliged to accept the truth of certain homiletical midrashic interpretations. Given the significance of aggadic midrash in Nahmanides' general system of thought, especially its mystical components, his apparent refusal to take seriously certain midrashic traditions has been viewed as dissimulation for the sake of the debate. This charge has weakened his credibility and has cast a shadow of doubt on the veracity of the *Vikuah*. In dealing with this question in *The Friars*, Cohen also questions Nahmanides' motives.

In response, Maccoby correctly notes that nowhere does Nahmanides deny the truth of the aggadic tradition; rather:

The Talmud, including its Aggadic elements, was held . . . in the utmost reverence, as the respository of accumulated Jewish wisdom; *but the wisdom was not necessarily on the surface* (italics mine). Moreover, since the Talmud is not an apodictic work, but consists of the opinions of named rabbis, who often disagree among themselves, there is nothing heretical in Judaism in regarding a given Talmudic view as worthy of attention but peripheral or

2. R. Chazan, *Medieval Jewry in Northern France* (Baltimore, 1973); A. Funkenstein, "Changes in the Patterns of Christian Anti-Jewish Polemic in the Twelfth Century" (Hebrew) *Zion*, 1968: Ch. Merchavya, *The Church versus Talmudic and Midrashic Literature, 500-1248* (Hebrew) (Jerusalem, 1970); V.H. Yerushalmi, "The Inquisition and the Jews of France in the Time of Bernard Gui," *Harvard Theological Review*, 1970; as well as numerous articles by the late Solomon Grayzel.

eccentric, if not downright wrong. . . . Even the eccentric or overruled view is regarded as having a certain sanctity and as worthy of study, a contribution to the never-ending search for truth about the Torah. . . . [T]he reply of Nahmanides is that one must understand the style of Aggadah in order to interpret it, and to know what in it was authoritative and what was not (p. 47).

This understanding sheds light on certain of Nahmanides' statements, such as his reaction to the tradition that the Messiah has already been born:

I do not believe in this Aggadah. . . . In truth, I do not believe that the Messiah was born on the day of the destruction, and this Aggadah is either not true, *or has some other interpretation derived from the secrets of the Sages* (italics mine) (p. 110).

Just as a Christian could read Biblical passages in a non-literal way, so could Nahmanides read an aggadic tradition symbolically or allegorically, especially considering his mystical leanings. As Maccoby notes:

A Maimunist might interpret an Aggadah allegorically in terms of Aristotelian philosophy, while a Kabbalist would interpret the same Aggadah allegorically (or rather symbolically) in terms of theosophy. True, there were *some* Aggadic passages which Nahmanides and other Kabbalists would interpret literally, rejecting rationalist allegorical interpretations. . . . On the other hand, there were many Aggadic passages which would be interpreted literally by rationalists and symbolically by Kabbalists (p. 72).

And, given the variety of Rabbinic expressions on the Messiah, Ramban, even taking such opinions at face value, can argue:

Now certain Sages of ours have written that the Messiah will not be born until near the time of the end, when he will come to take us out of exile, and for that reason I do not believe in the part of this book that says that he was born on the day of the destruction (p. 115).

Maccoby maintains that Nahmanides' approach to aggadah as expressed in the *Vikuah* need not be viewed as a rhetorical ploy for the sake of debate. Ramban is being intellectually honest with his opponent and, in so doing, indicates his superior knowledge and understanding of midrash. In addressing this issue Maccoby has helped to shed light on a perplexing matter.

The translations of the disputation accounts comprise the core of *Judaism on Trial*. They are generally accurate and, therefore, are helpful tools for the student of medieval Jewish history who cannot use the Hebrew and Latin originals. They are offered by the author as a corrective to O.S. Rankin's rendering in his *Jewish Religious Polemic* (Edinburgh, 1956). For the most part, Maccoby's translation is an improvement. There are, however, a few significant instances where the sense of Nahmanides' words is not captured.

One such example can be found on p. 103: "For ever since Fray Paul went around in Provence and in many other places, I have heard that he has been saying something like this, and I found it very surprising." The

second clause of the passage, here ending with the words “something like this,” actually concludes in the Hebrew with *le-yehudim rabim*, “to many Jews.”³ For some reason, Maccoby overlooked this phrase and, consequently, deleted a datum that is significant for the proper understanding of Paul’s activity: Paul preached to many Jews! This is the radically new aspect of Paul’s work that must be comprehended if we are to understand why the Barcelona disputation was held in the first place. To omit this point in what is being offered as a careful translation is, indeed, an egregious error. It should be noted that Rankin keeps this phrase in his translation (p. 179).

Equally problematic is the rendering at the top of p. 104, “. . . and that they believed that he was not merely human, but truly divine, as Christians think?” The key phrase here is the reference to Catholic christological doctrine, “not merely human, but truly divine.” The Hebrew reads: *ish gamur ve-elohah be-emet*. Rankin translates this: “completely man and truly God.” Simply put, Rankin is correct, and Maccoby is in error. With great precision Ramban expressed the terminology of the Chalcedonian creed’s statement of the two natures of Jesus: “This selfsame one is perfect both in deity and also in human-ness; this selfsame one is also actually (*alethos* = truly) God and actually man.”⁴ The care with which he made this point reinforces his credibility as a reporter of the events of 1263. By failing to translate accurately this point in the *Vikuah*, Maccoby not only impairs his rendering but also weakens his arguments regarding the authenticity of the work.

There are other instances where Maccoby’s translations are questionable,⁵ but, overall, the translations are reliable and the notes to the *Vikuah* are enlightening. On balance, Maccoby has given us a useful book that sheds new light on important events in Jewish history and helps us to a better understanding of the texts that relate to those events.

3. All Hebrew passages from the *Vikuah* that are cited in this essay can be found in C.B. Chavel, *Kitvei ha-Ramban* (Jerusalem, 1963), Vol. I.

4. Translation, J.H. Leith, *Creeks of the Churches* (Atlanta, 1977), p. 35; see also Denzinger, *Enchiridion Symbolorum* (Freiburg, 1957), p. 148.

5. Cf. p. 105, where *she-ballah hamalkhut me-yehudah velo me-yisrael* is rendered “the royal power lapsed from Israel, though not from Judah” (italics mine); p. 137, where *ad she-yigbar al oyevav sevivav* is rendered “and give him victory over his enemies round about him” (italics mine); or where additional explanation is warranted in the notes (cf. p. 107 where “from the Prince or King” is offered as the translation of a phrase that appears in the Hebrew as *min hanassi min hamelekh* or *min hanassi vehu hamelekh*).



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